

1 Jack Silver, Esq. SBN 160575  
2 Jerry Bernhaut, Esq. SBN 206264  
3 Law Office of Jack Silver  
4 Post Office Box 5469  
5 Santa Rosa, CA 95402-5469  
6 Tel. (707) 528-8175  
7 Fax. (707) 528-8675  
8 lhm28843@sbcglobal.net

9 Attorneys for Plaintiff  
10 NORTHERN CALIFORNIA RIVER WATCH

11 HEATH JAY BENNETT a minor, MARIAH  
12 FRANCES BELLA BENNETT, a minor,  
13 JAROD MYRON BLOOM a minor, BIANCA  
14 AUGUSTINE, STUART BENNETT

15 Plaintiffs IN PRO SE

16 UNITED STATES DISTRICT COURT  
17 EASTERN DISTRICT OF CALIFORNIA

18 NORTHERN CALIFORNIA RIVER WATCH,  
19 a non-profit corporation; HEATH JAY  
20 BENNETT a minor child, by and through his  
21 guardian ad litem BIANCA AUGUSTINE;  
22 MARIAH FRANCES BELLA BENNETT, a  
23 minor child, by and through her guardian ad  
24 litem BIANCA AUGUSTINE; JAROD  
25 MYRON BLOOM, a minor child, by and  
26 through his guardian ad litem BIANCA  
27 AUGUSTINE; BIANCA AUGUSTINE; and  
28 STUART BENNETT,

Plaintiffs,

v.

BULLION RIVER GOLD CORP., FRENCH  
GULCH (NEVADA) MINING CORP, and  
DOES 1-10, Inclusive,

Defendants

CASE NO.

**COMPLAINT FOR INJUNCTIVE RELIEF,  
CIVIL PENALTIES, RESTITUTION AND  
REMEDICATION  
(Environmental -  
Clean Water Act - 33 U.S.C. §1251 et seq.,  
Resource Recovery and Conservation Act -  
42 U.S.C. 6901 et seq.)**

**DEMAND FOR JURY TRIAL**

1 NOW COME PLAINTIFFS, NORTHERN CALIFORNIA RIVER WATCH a non-profit  
2 corporation, (hereafter, "RIVER WATCH"), by and through its attorneys, and HEATH JAY BENNETT,  
3 a minor child, by and through his guardian ad litem BIANCA AUGUSTINE, MARIAH FRANCES  
4 BELLA BENNETT, a minor child, by and through her guardian ad litem BIANCA AUGUSTINE,  
5 JAROD MYRON BLOOM , a minor child, by and through his guardian ad litem BIANCA  
6 AUGUSTINE, BIANCA AUGUSTINE; and STUART BENNETT (hereafter, "INDIVIDUAL  
7 PLAINTIFFS"), and for their Complaint against Defendants, BULLION RIVER GOLD CORP.,  
8 FRENCH GULCH (NEVADA) MINING CORP., and DOES 1-10, Inclusive, (hereafter,  
9 "DEFENDANTS"), state as follows:

10 **I. NATURE OF THE CASE**

11 1. This is a citizens' suit for relief brought by RIVER WATCH and INDIVIDUAL PLAINTIFFS  
12 under the Federal Water Pollution Control Act, also known as the Clean Water Act (hereafter, "CWA"),  
13 33 U.S.C. §1251 et seq., specifically Section 505, 33 U.S.C. §1365, 33 U.S.C. § 1311, and 33 U.S.C.  
14 § 1342, to stop DEFENDANTS from repeated and ongoing violations of the CWA. These violations  
15 are detailed in the Notice of Violations and Intent to File Suit dated August 3, 2007 (hereafter, "CWA  
16 NOTICE") made part of this pleading and attached hereto as EXHIBIT A.

17 2. This is a also a citizens' suit brought against DEFENDANTS under the citizen suit enforcement  
18 provisions of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (hereafter,  
19 "RCRA"), specifically Sections 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) and 7002(a)(1)(B), 42 U.S.C.  
20 § 6972(a)(1)(B), to stop DEFENDANTS from repeated and ongoing violations of the RCRA. These  
21 violations are detailed in the Notice of Violations and Intent to File Suit also dated August 3, 2007  
22 (hereafter, "RCRA NOTICE") made part of this pleading and attached hereto as EXHIBIT B.

23 3. DEFENDANTS are routinely violating the terms and conditions of California's General  
24 Industrial Storm Water Permit for Industrial Storm Water Discharges (WDID 228S003380), National  
25 Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water  
26 Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No. 91-13-  
27 DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to § 402(p) of the Clean Water  
28 Act, 33 U.S.C. § 1342(p) (hereafter, "General Permit"), by their un-permitted discharges of contaminated

1 storm water from their Washington Mine facilities, as described in the CWA NOTICE, their discharges  
2 of non-storm water pollutants from said Washington Mine facilities in violation of effluent limitations;  
3 and, their violations of the procedural requirements of the General Permit.

4 4. DEFENDANTS are routinely violating the terms and conditions of California's General Permit  
5 by permitting pollutants in milling process water, drainage from Washington Mine sites including  
6 vehicle and equipment fueling areas, actively used mine locations, materials storage and road  
7 maintenance to be carried by storm water and discharged into adjacent surface waters, including  
8 Scorpion Gulch Creek and French Gulch Creek.

9 5. DEFENDANTS are routinely violating the CWA's prohibition against discharging a pollutant  
10 from a point source to waters of the United States without a NPDES permit, CWA §301(a), 33 U.S.C.  
11 §1311(a), in the course of their operation of the Washington Mine site and facilities as described in the  
12 CWA NOTICE. Point source discharges to waters of the United States occur every day via ground water  
13 migration due to the hydrological connection between the various adits and other current and former  
14 operational sites, as described in the CWA NOTICE, and adjacent surface waters, including Scorpion  
15 Gulch Creek and French Gulch Creek, tributaries to Whiskeytown Reservoir, all waters of the United  
16 States.

17 DEFENDANTS are routinely violating the CWA's prohibition against discharging a pollutant  
18 from a point source to waters of the United States without a NPDES permit by permitting wastewater  
19 and acid drainage via surface flows by gravity from the Robillard, I-Level and Barnes Adits of the  
20 Washington Mine into adjacent surface waters, including Scorpion Gulch Creek and French Gulch  
21 Creek, and by wastewater flow from a retention pond through a pipeline over ground to the Right Fork  
22 of French Gulch Creek, all described in detail in the CWA NOTICE.

23 DEFENDANTS are also routinely violating the Basin Plan, Environmental Protection Agency  
24 (hereafter, "EPA") regulations codified in the Code of Federal Regulations, and toxics standards  
25 promulgated by the State Water Resources Control Board in the course of DEFENDANTS' operation  
26 of the Washington Mine facilities as described in the CWA NOTICE.

27 6. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to public  
28 participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent part:

1 *Public participation in the development, revision, and enforcement of any regulation,*  
2 *standard, effluent limitation, plan or program established by the Administrator or any*  
3 *State under this chapter shall be provided for, encouraged, and assisted by the*  
*Administrator and the States.*

4 7. DEFENDANTS illegally discharge to waters which are habitat for threatened or endangered  
5 species as that term is defined by the California EPA and the United States EPA.

6 8. DEFENDANTS are routinely violating the RCRA's regulatory mandates applicable to  
7 hazardous or solid wastes by causing toxic metals such as arsenic and other hazardous wastes, to be  
8 discharged or deposited where they are or probably will be discharged into waters of the State, thereby  
9 creating or threatening to create, conditions of pollution of nuisance. ( 42 U.S.C. § 6972(a)(1)(A)).

10 9. DEFENDANTS are routinely violating the RCRA's prohibition against creating an imminent and  
11 substantial endangerment to human health and the environment by their operations at the Washington  
12 Mine Site, as identified in the RCRA NOTICE, which have caused contamination of soil, groundwater  
13 and surface water. (42 U.S.C. § 6972(a)(1)(B)).

14 Pollutants at the Washington Mine Site leach into groundwater from a former percolation pond  
15 and a former tailings settling pond, a former stockpiling area for materials and supplies, improper  
16 disposal of process water and on site reclamation of previously disturbed areas with mine waste rock  
17 which contains a high concentration of arsenic. DEFENDANTS also spread mine waste rock on French  
18 Gulch Road, adjacent to the real property of INDIVIDUAL PLAINTIFFS, where arsenic is discharged  
19 into surface and ground water adjacent to INDIVIDUAL PLAINTIFFS' real property and where toxic  
20 dust containing a high concentration of arsenic drifts into the air and onto the land, structures and  
21 residence on INDIVIDUAL PLAINTIFFS' real property.

22 10. RIVER WATCH and INDIVIDUAL PLAINTIFFS seeks declaratory relief, injunctive relief to  
23 prohibit future violations, the imposition of civil penalties, and other relief for DEFENDANTS'  
24 violations of the terms of the General Permit, the CWA's prohibition of discharging a pollutant from a  
25 point source to waters of the United States without a NPDES Permit, the RCRA's standards and  
26 regulations applicable to hazardous or solid wastes and DEFENDANTS' violation of the RCRA's  
27 prohibition against creating an imminent and substantial endangerment to human health and the  
28 environment.

1 11. This is a also a citizens' suit brought against DEFENDANTS for continuing and ongoing  
2 violations of the California Safe Drinking Water and Toxic Enforcement Act, California Health and  
3 Safety Code §25249.5 et seq, also known as and hereafter referred to as "Proposition 65") for knowingly  
4 discharging or releasing chemicals known to the State of California to cause cancer or reproductive  
5 toxicity to enter into water or onto or into land where such chemicals pass or probably will pass into a  
6 source of drinking water, as described in the Notice of Violations and Intent to File Suit dated December  
7 14, 2007 made part of this pleading and attached hereto as EXHIBIT C. RIVER WATCH and  
8 INDIVIDUAL PLAINTIFFS contend that at each site identified further in this Complaint,  
9 DEFENDANTS have within the last twelve (12) month period caused contamination from arsenic and  
10 lead to enter groundwater and/or surface waters of the State, in violation of Proposition 65.

## 11 II. PARTIES

12 12. Plaintiff, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit public benefit  
13 corporation duly organized under the laws of the State of California, with headquarters and main office  
14 located at 6741 Sebastopol Avenue, Suite 140, Sebastopol, California. RIVER WATCH is dedicated  
15 to protect, enhance and help restore the surface and subsurface waters of Northern California. Its  
16 members live in Northern California including Shasta County where the Washington Mine facilities  
17 under DEFENDANT's operation and/or control are located.

18 13. Members of RIVER WATCH live nearby to waters affected by DEFENDANTS's illegal  
19 discharges. Said members have interests in the watersheds identified in this Complaint, which interests  
20 are or may be adversely affected by DEFENDANTS's violations. Said members use the effected waters  
21 and effected watershed areas for domestic water, recreation, sports, fishing, swimming, hiking,  
22 photography, nature walks, religious, spiritual and shamanic practices, and the like. Furthermore, the  
23 relief sought will redress the injury in fact, likelihood of future injury and interference with the interests  
24 of said members.

25 14. Plaintiffs HEATH JAY BENNETT, a minor child, by and through his guardian ad litem  
26 BIANCA AUGUSTINE, MARIAH FRANCES BELLA BENNETT, a minor child, by and through her  
27 guardian ad litem BIANCA AUGUSTINE, JAROD MYRON BLOOM, a minor child, by and through  
28 his guardian ad litem BIANCA AUGUSTINE, BIANCA AUGUSTINE and STUART BENNETT are

1 individuals residing at 11413 French Gulch Road, French Gulch, CA 96033, in the immediate  
2 neighborhood of the Washington Mine Site. They have suffered direct, serious effects to their health  
3 as a result of DEFENDANTS' toxic discharges at the Washington Mine Site as alleged in this  
4 Complaint.

5 15. RIVER WATCH and INDIVIDUALS PLAINTIFFS are informed and believe and on such  
6 information and belief allege that Defendant BULLION RIVER GOLD CORP. is a private corporation  
7 with administrative offices located at 3500 Lakeside Court, Suite 200, Reno Nevada 89509-4896; and,  
8 is the owner and/or operator of the Washington Mine.

9 16. RIVER WATCH and INDIVIDUALS PLAINTIFFS are informed and believe and on such  
10 information and belief allege that Defendant FRENCH GULCH (NEVADA) MINING CORP. is a  
11 private corporation with administrative offices located at 3500 Lakeside Court, Suite 200, Reno Nevada  
12 89509-4896; and, is the owner and/or operator of the Washington Mine.

13 17. DEFENDANTS DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations  
14 and entities, who are, or were, responsible for, or in some way contributed to, the violations which are  
15 the subject of this Complaint or are, or were, responsible for the maintenance, supervision, management,  
16 operations, or insurance coverage of DEFENDANTS's Washington Mine facilities and operations. The  
17 names, identities, capacities, and functions of DEFENDANTS DOES 1 - 10, Inclusive are presently  
18 unknown to RIVER WATCH and INDIVIDUAL PLAINTIFFS, who shall seek leave of court to amend  
19 this Complaint to insert the true names of said DOES Defendants when the same have been ascertained.

### 20 III. JURISDICTIONAL ALLEGATIONS

21 18. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the CWA, 33  
22 U.S.C. § 1365(a)(1), which states in part that, "any citizen may commence a civil action on his own  
23 behalf against any person . . . who is alleged to be in violation of (A) an effluent standard or limitation  
24 . . . or (B) an order issued by the Administrator or a State with respect to such a standard or limitation."  
25 For purposes of Section 505, "the term 'citizen' means a person or persons having an interest which is  
26 or may be adversely affected."

27 19. Subject matter jurisdiction is further conferred upon this Court by RCRA § 7002(a)(1), 42  
28 U.S.C. § 6972(a)(1), which states in part that, "...any person may commence a civil action on his own

1 behalf (A) against any person ... who is alleged to be in violation of any permit, standard, regulation,  
2 condition requirement , prohibition or order which has become effective pursuant to this chapter, or (B)  
3 against any person ...who has contributed or who is contributing to the past or present handling, storage,  
4 treatment, transportation or disposal of any solid or hazardous waste which may present an imminent  
5 and substantial endangerment to health or the environment."

6 20. Members and supporters of RIVER WATCH as well as INDIVIDUAL PLAINTIFFS reside  
7 in the vicinity of, derive livelihoods from, own property near, and/or recreate on, in or near and/or  
8 otherwise use, enjoy and benefit from the waterways and associated natural resources into which  
9 DEFENDANTS discharges pollutants, or by which DEFENDANTS' operations adversely affect their  
10 interests, in violation of the General Permit, CWA § 301(a), 33 U.S.C. § 1311(a) and RCRA § 7002  
11 (a)(1)(B), 42 U.S.C. § 6972(a)(1)(B). The health, economic, recreational, aesthetic and environmental  
12 interests of RIVER WATCH, its members, and INDIVIDUAL PLAINTIFFS may be, have been, are  
13 being, and will continue to be adversely affected by DEFENDANT's unlawful violations. RIVER  
14 WATCH , its members and INDIVIDUAL PLAINTIFFS contend there exists an injury in fact to them,  
15 causation of that injury by DEFENDANTS's complained of conduct, and a likelihood that the requested  
16 relief will redress that injury.

17 21. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), notice of the CWA  
18 violations alleged in this Complaint was given more than sixty (60) days prior to commencement of this  
19 lawsuit, to: (a) DEFENDANTS, (b) the United States EPA, Federal and Regional, and (c) the State of  
20 California Water Resources Control Board.

21 22. Pursuant to Section 505(c)(3) of the CWA, 33 U.S.C. § 1365(c)(3), a copy of this Complaint  
22 has been served on the United States Attorney General and the Administrator of the Federal EPA.

23 23. Pursuant to Section 7002 (2)(A) of the RCRA, 42 U.S.C. § 6972(2)(A), notice of the RCRA  
24 violations alleged in this Complaint was given more than ninety (90) days prior to the commencement  
25 of this lawsuit to: (a) DEFENDANTS, (b) the United States Environmental Protection Agency, Federal  
26 and Regional, (c) the State of California Water Resources Control Board, and (d) the State of California  
27 Integrated Waste Management Board.

24. Pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), venue lies in this District as the facilities for the extraction and processing of gold containing ore under DEFENDANTS' operation and/or control, and the sites where illegal discharges occurred, which are the source of the violations complained of in this action, are located within this District.

25. The basis for assignment of this case to the Eastern District of California, pursuant to RCRA §7002(a)&(b), 42 U.S.C. §§ 6972(a)&(b), is that DEFENDANTS' mine and operations are located in this District. All of the sites of pollution are located in the Eastern District of California as well.

26. Subject matter jurisdiction is conferred upon this Court by California Health and Safety Code § 25249.7 (d), which states in part that "Actions pursuant to this section may be brought by any person in the public interest....."

27. This Court has supplemental jurisdiction over all State based causes of action in this Complaint pursuant to 28 U.S.C. § 1367, as those claims form part of the same case or controversy as the Federal causes of action. These State based causes of action are as follows:

a. Negligence

INDIVIDUAL PLAINTIFFS allege DEFENDANTS have failed to exercise due care in the storage, disposal and handling of hazardous substances, including arsenic, lead, petrochemicals, potassium xanthate and copper sulfate, which negligent conduct of DEFENDANTS has proximately caused INDIVIDUAL PLAINTIFFS to suffer harm and property damage.

b. Negligence Per Se

INDIVIDUAL PLAINTIFFS allege DEFENDANTS have violated and continue to violate provisions of the CWA and RCRA. These violations are the legal cause of INDIVIDUAL PLAINTIFFS' injuries and damages as hereinafter set forth.

c. Inverse Condemnation

INDIVIDUAL PLAINTIFFS allege DEFENDANTS have discharged pollutants into the air, surface and subsurface water in and around INDIVIDUAL PLAINTIFFS' real property, resulting in loss of value and habitability of their property.

d. NUISANCE

INDIVIDUAL PLAINTIFFS allege DEFENDANTS' operation , control and management of



1 the Washington Mine Site has contaminated the air, soil, ground and surface water in and  
2 around INDIVIDUAL PLAINTIFFS' real property, constituting a nuisance under California  
3 Civil Code § 3479 in that it deprived INDIVIDUAL PLAINTIFFS of the quiet enjoyment of  
4 their property.

5 e. Trespass

6 INDIVIDUAL PLAINTIFFS allege that DEFENDANTS' conduct, including the discharge of  
7 pollutants from DEFENDANTS' Washington Mine Site and from mine waste rock spread on  
8 the road adjacent to INDIVIDUAL PLAINTIFFS' real property, resulting in contamination of  
9 INDIVIDUAL PLAINTIFFS' real property and DEFENDANTS' failure to properly clean up  
10 and remediate the conditions causing said damage, constitute wrongful acts of continuing  
11 trespass on INDIVIDUAL PLAINTIFFS' real property and has interfered with INDIVIDUAL  
12 PLAINTIFFS' rights of private occupancy.

13 f. Strict Liability in Tort

14 INDIVIDUAL PLAINTIFFS allege that DEFENDANTS' conduct, including the discharge of  
15 pollutants from DEFENDANTS' Washington Mine Site and from mine waste rock spread on  
16 the road adjacent to INDIVIDUAL PLAINTIFFS' real property caused an ultra hazardous  
17 activity to exist, and that INDIVIDUAL PLAINTIFFS have been damaged as a result of  
18 DEFENDANTS' course of conduct while engaged in the aforesaid ultra hazardous activity.

19 **IV. GENERAL ALLEGATIONS**

20 28. RIVER WATCH and INDIVIDUAL PLAINTIFFS incorporate by reference all the foregoing  
21 including EXHIBITS A, B and C as though the same were separately set forth herein.

22 29. DEFENDANTS own and/or operate the Washington Mine, located approximately 2.6 air miles  
23 northwest of French Gulch in western Shasta County, California. (hereafter, "the MINE") The MINE  
24 has historically been used solely for the extraction and processing of gold-containing ore. The MINE  
25 discharges pollutants both directly and indirectly into the waterways referenced below.

26 30. All illegal discharges and activities complained of in this Complaint occur in the waterways  
27 named in the CWA NOTICE, all of which are waters of the United States, and at the MINE Site  
28 locations identified in detail in the CWA NOTICE and RCRA NOTICE.

31. The Regional Water Quality Control Board has determined that the watershed areas and affected waterways are beneficially used for drinking water, water contact recreation, non-contact water recreation, fresh water habitat, wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial service supply, navigation, and sport fishing.

#### V. STATUTORY AND REGULATORY BACKGROUND

32. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a "point source" into the navigable waters of the United States, unless such discharge is in compliance with applicable effluent limitations as set by the EPA and the applicable State agency. These limits are to be incorporated into an NPDES permit for that point source specifically. Additional sets of regulations are set forth in the Basin Plan, California Toxics Plan, the Code of Federal Regulations and other regulations promulgated by the EPA and the State Water Resources Control Board.. Section 301(a) of the CWA prohibits discharges of pollutants or activities not authorized by, or in violation of an effluent standard or limitation or an order issued by the EPA or a State with respect to such a standard or limitation including an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The MINE owned and/or operated by DEFENDANTS is a point source under the CWA.

33. The affected waterways detailed in this Complaint and in the CWA NOTICE are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

34. The Administrator of the EPA has authorized the Regional Water Quality Control Board to issue NPDES permits, subject to specified conditions and requirements, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

35. DEFENDANTS have no NPDES Permit for discharging pollutants other than storm water from the MINE and mining operations to waters of the United States. Without a NPDES Permit, all unauthorized point source discharges from the MINE and mining operations to waters of the United States are illegal. The MINE is itself a point source. Discharges from this point source via tributary ground waters to waters of the United States, without a NPDES Permit, are illegal. Direct discharges from this point source via surface flows and pipeline are illegal.

36. Section 402(p) of the CWA, 33 U.S.C. § 1342; 40 C.F.R. § 122.26, prohibits industrial storm water discharges without a permit. For storm water discharges allowed under CWA § 402(p),

1 California's General Permit requires dischargers in operation prior to October 1, 1992, to have developed  
2 and implemented a Storm Water Pollution Prevention Plan or "SWPPP". DEFENDANTS operated  
3 prior to and continue to operate subsequent to October 1, 1992. DEFENDANTS have not fully  
4 developed and/or adequately implemented a SWPPP for their mining operations, as evidenced by the  
5 fact that DEFENDANTS have failed to eliminate non-storm water discharges from the MINE.

6 37. RCRA § 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits an action against any person  
7 who violates a PERMIT, STANDARD or REGULATION pursuant to the RCRA. DEFENDANTS have  
8 stored, handled and disposed of materials containing arsenic and other toxic metals, defined as hazardous  
9 wastes under the RCRA, in a manner which has allowed these pollutants to be discharged to soil and  
10 groundwater beneath and adjacent to the MINE site, in violation of regulations regarding the use and  
11 disposal of hazardous wastes. RCRA § 3004 (d), 42 U.S.C. §6924(d)).

12 38. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) permits an action against any person who  
13 has contributed or who is contributing to the past or present handling of any solid or hazardous waste  
14 which may present an imminent and substantial endangerment to health or the environment. The mine  
15 tailings residue after gold is separated from the ore and the waste rock generated by the mining  
16 operations are solid wastes and hazardous wastes pursuant to RCRA §6903(27), 42 U.S.C. § 6972 (27),  
17 and RCRA § 6903(5), 42 U.S.C. § 6972 (5). Pollutants from these substances have leached into soil and  
18 ground water beneath and adjacent to the MINE Site, creating an imminent and substantial endangerment  
19 to health and the environment.

20 39. Proposition 65 prohibits discharging or releasing chemicals known to the State of California to  
21 cause cancer or reproductive toxicity to enter into water or onto or into land where such chemicals pass  
22 or probably will pass into a source of drinking water.

23 40. Arsenic (listed 02/27/87) is a known carcinogen. Lead was listed in 02/27/87 as causing  
24 reproductive toxicity and listed in 01/01/91 as causing cancer. Surface and groundwater at the MINE  
25 site are potential sources of drinking water under the Regional Water Quality Control Board's Water  
26 Quality Control Plan, or Basin Plan. In the course of doing business DEFENDANTS have discharged  
27 arsenic and lead to surface and groundwater at the MINE on a daily basis since January 1, 1976. Under  
28 Proposition 65, a violator is subject to a maximum civil penalty of \$2,500.00 per day per violation.

**VI. DEFENDANTS' VIOLATIONS**

41. DEFENDANTS' point source discharges not regulated by a NPDES Permit violate the CWA's prohibition against discharge of pollutants from a point source without a NPDES Permit. The violations are established in Regional Water Quality Control Board Files for the MINE, as well as in studies conducted by DEFENDANTS in compliance with orders from regulatory agencies .

42. The enumerated violations are detailed in the CWA NOTICE, incorporated herein by reference, and below, designating the section of the CWA violated by the described activity.

43. DEFENDANTS' failure to comply with the terms of California's General Permit violate the CWA's prohibition against the discharge of contaminated storm water and non-storm water pollutants. The violations are established in DEFENDANTS' monitoring data or lack of monitoring and reporting which are necessary for DEFENDANTS to prove compliance with the General Permit as well as data sent to the Regional Water Quality Control Board by DEFENDANTS and data by Board staff recording direct observations at the MINE.

44. The enumerated violations are detailed in the CWA NOTICE, incorporated herein by reference, and below, designating the section of the CWA violated by the described activity.

45. The location of the discharges are the discharges points as described in the CWA NOTICE, incorporated herein by reference, and as described in DEFENDANTS' SWPPP.

46. DEFENDANTS' discharges to soil and groundwater violate the RCRA's regulations regarding the storage and disposal of hazardous wastes. The violations are established in Regional Water Quality Control Board Files for the MINE, as well as in studies conducted by DEFENDANTS in compliance with orders from regulatory agencies

47. DEFENDANTS' discharges to soil and ground water violate the RCRA's prohibition against creating an imminent and substantial endangerment to health and the environment. The violations are established in Regional Water Quality Control Board Files for the MINE, as well as in studies conducted by DEFENDANTS in compliance with orders from regulatory agencies .

48. The enumerated violations are detailed in the RCRA NOTICE incorporated herein by reference, and below, designating the section of the RCRA violated by the described activity.

1 49. DEFENDANTS have contaminated ground and drinking water sources in and around the  
2 MINE with arsenic and lead, in violation Proposition 65. Arsenic (listed 02/27/87) is a known  
3 carcinogen. Lead was listed in 02/27/87 as causing reproductive toxicity and listed in 01/01/91 as  
4 causing cancer. Surface and groundwater at the MINE are potential sources of drinking water under the  
5 Regional Water Quality Control Board's Water Quality Control Plan, or Basin Plan. In the course of  
6 doing business DEFENDANTS have knowingly discharged arsenic and lead to surface and groundwater  
7 at the MINE on a daily basis since January 1, 1976. Under Proposition 65, a violator is subject to a  
8 maximum civil penalty of \$2,500.00 per day per violation.

9 50. DEFENDANTS extract and process gold-containing ore in a manner which results in discharges  
10 of arsenic and lead as detailed above and in EXHIBIT C. DEFENDANTS have known of the  
11 contamination at the MINE throughout the course of their operations, and are also aware that failing to  
12 remediate the pollution allows the contamination to migrate through soil and groundwater and  
13 continually contaminate and re-contaminate actual and potential sources of drinking water.

## 14 **VII. CLAIMS FOR RELIEF**

### 15 **A. FIRST CLAIM FOR RELIEF**

16 **Violation of CWA 33 U.S.C. § 1251 et seq., 33 U.S.C. § 1342 (a) and (b), 33 U.S.C. § 1311**

#### 17 **Discharge of Pollutants from Point Sources Must be Regulated by a NPDES Permit**

18 51. RIVER WATCH and INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the  
19 allegations of Paragraphs 1 through 50 including EXHIBIT A as though fully set forth herein.

20 52. DEFENDANTS have and continue to violate the CWA as evidenced by the discharges of  
21 pollutants from a point source without a NPDES permit in violation of Section 301 of the CWA, 33  
22 U.S.C. § 1311.

23 53. The violations of DEFENDANTS are ongoing and will continue after the filing of this  
24 Complaint. RIVER WATCH and INDIVIDUAL PLAINTIFFS allege herein all violations which may  
25 have occurred or will occur prior to trial, but for which data may not have been available or submitted  
26 or apparent from the face of the reports or data submitted by DEFENDANTS to the RWQCB or to  
27 RIVER WATCH and INDIVIDUAL PLAINTIFFS prior to the filing of this Complaint. RIVER  
28 WATCH and INDIVIDUAL PLAINTIFFS will file additional amended complaints if necessary to

1 address DEFENDANTS' State and Federal violations which may occur after the filing of this Complaint.

2 Each of DEFENDANTS' violations is a separate violation of the CWA.

3 54. RIVER WATCH and INDIVIDUAL PLAINTIFFS aver and believe and on such belief allege  
4 that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief,  
5 DEFENDANTS will continue to violate the CWA as well as State and Federal standards with respect  
6 to the enumerated discharges and releases. RIVER WATCH and INDIVIDUAL PLAINTIFFS aver and  
7 believe and on such belief allege that the relief requested in this Complaint will redress the injury to  
8 RIVER WATCH, its members and to INDIVIDUAL PLAINTIFFS, prevent future injury, and protect  
9 the their interests which are or may be adversely affected by DEFENDANTS' violations of the CWA,  
10 as well as other State and Federal standards.

11 **B. SECOND CLAIM FOR RELIEF**

12 **Violation of CWA , 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26**

13 **Discharger Must Comply With California's General Industrial Storm Water Permit**

14 55. RIVER WATCH and INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the  
15 allegations of Paragraphs 1 through 54 including EXHIBIT A, as though fully set forth herein.

16 56. DEFENDANTS have violated and continue to violate the CWA as evidenced by the violations  
17 of California's General Permit. By law and by the terms of California's General Permit, which  
18 DEFENDANTS have not objected to, violations of California's General Permit are violations of the  
19 CWA.(See 40 C.F.R. § 122.41(a)).

20 57. DEFENDANTS' violations are ongoing, and will continue after the filing of this Complaint.  
21 RIVER WATCH and INDIVIDUAL PLAINTIFFS allege all violations which may have occurred or  
22 will occur prior to trial, but for which data may not have been available or submitted or apparent from  
23 the face of the reports or data submitted by DEFENDANTS to the RWQCB or to RIVER WATCH or  
24 INDIVIDUAL PLAINTIFFS prior to the filing of this Complaint. RIVER WATCH and/or  
25 INDIVIDUAL PLAINTIFFS will file additional amended complaints if necessary to address State and  
26 Federal violations of California' General Permit which may occur after the filing of this Complaint.  
27 Each of DEFENDANTS' violations in excess of its permit limits or State and Federal standards has been  
28 and is a separate violation of the CWA. DEFENDANTS have violated and continue to violate an

1 "effluent standard or limitation" under Section 505(a)(1) of the CWA, 33 U.S.C. § 1342(p); 40 C.F.R..  
2 § 122.26 ,or an order issued by the State with respect to such a standard or limitation.

3 58. RIVER WATCH and INDIVIDUAL PLAINTIFFS aver and believe and on such belief allege  
4 that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief,  
5 DEFENDANTS will continue to violate California's General Permit as well as State and Federal  
6 standards with respect to the enumerated discharges and releases. RIVER WATCH and INDIVIDUAL  
7 PLAINTIFFS aver and believe and on such belief allege that the relief requested in this Complaint will  
8 redress the injury to RIVER WATCH, to its members and to INDIVIDUAL PLAINTIFFS, prevent  
9 future injury, and protect their interests which are or may be adversely affected by DEFENDANTS'  
10 violations of California's General Permit, State and Federal standards.

11 **C. THIRD CLAIM FOR RELIEF**

12 **Violation of 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(A)**

13 59. RIVER WATCH and INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the  
14 allegations of Paragraphs 1 through 58 including EXHIBIT B as though fully set forth herein.

15 60. RCRA Section 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A) permits an action against any person  
16 who violates a PERMIT, STANDARD or REGULATION pursuant to the RCRA. Civil penalties may  
17 be assessed against any person or entity in violation of this section, under the provisions of the RCRA,  
18 42 U.S.C. §§ 6928 (a) and (g).

19 61. DEFENDANTS' storage and handling of materials at the MINE containing arsenic and other  
20 toxic metals, defined as hazardous wastes under the RCRA, has caused the discharge of hazardous  
21 wastes to soil and groundwater in violation of regulations regarding the use and disposal of hazardous  
22 wastes. (RCRA Section 3004 (d), 42 U.S.C. §6924(d)).

23 62. RIVER WATCH and INDIVIDUAL PLAINTIFFS aver and believe and on such belief allege  
24 that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief,  
25 DEFENDANTS will continue to violate a PERMIT, STANDARD or REGULATION pursuant to the  
26 RCRA, specifically RCRA Section 3004 (d), 42 U.S.C. §6924(d).

27 //

28 //

**D. FOURTH CLAIM FOR RELIEF**

**Violation of 42 U.S.C. § 6901 et seq., specifically 42 U.S.C. § 6972(a)(1)(B)**

63. RIVER WATCH and INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the allegations of Paragraphs 1 through 62 including EXHIBIT B as though fully set forth herein.

64. RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), provides that any person may commence a civil action against any person or governmental entity including a past or present generator, transporter, owner or operator of a treatment, storage or disposal facility who has contributed to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or to the environment.

65. DEFENDANTS own and operate the MINE at which they have stored mine tailings and waste rock containing pollutants including arsenic, potassium xanthate, copper sulfate and methylisobutylcarbonol, lead copper and zinc.

66. DEFENDANTS have stored the mine tailings and waste rock in a manner which has allowed them to leach pollutants into soil and ground water beneath and adjacent to the MINE.

67. The pollutants listed above, are known to be hazardous to the environment and if released into the environment in sufficient quantity to pose an imminent and substantial risk.

68. For purposes of the RCRA, arsenic, potassium xanthate, copper sulfate, lead copper, zinc and methylisobutylcarbonol are "solid wastes" and "hazardous wastes" within the meaning of the statute.

69. RIVER WATCH and INDIVIDUAL PLAINTIFFS are informed and believe, and thereon allege that amounts of arsenic, potassium xanthate, copper sulfate, methylisobutylcarbonol, lead copper and zinc released by DEFENDANTS at the MINE are in sufficient quantity to pose an imminent and substantial risk to both the environment and human health.

**E. FIFTH CLAIM FOR RELIEF**

**Violation of California Health and Safety Code §25249.5**

70. RIVER WATCH and INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the allegations of Paragraphs 1 through 69 including EXHIBIT C as though fully set forth herein.

71. California Health and Safety Code §25249.5 et seq, Proposition 65, prohibits discharging or releasing chemicals known to the State of California to cause cancer or reproductive toxicity, where they



1 can enter into water or onto or into land where such chemicals pass or probably will pass into a source  
2 of drinking water

3 72. In the course of doing business DEFENDANTS have discharged arsenic and lead to surface and  
4 groundwater at the MINE on a daily basis since January 1, 1976. Arsenic (listed 02/27/87) is a known  
5 carcinogen. Lead was listed in 02/27/87 as causing reproductive toxicity and listed in 01/01/91 as  
6 causing cancer. Surface and groundwater at the MINE are potential sources of drinking water under the  
7 RWQCB's Water Quality Control Plan.

8 **F. SIXTH CLAIM FOR RELIEF**

9 **Inverse Condemnation - Cal. Const. Art. I, Section 19**

10 73. INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the allegations of Paragraphs  
11 1 through 72 including EXHIBITS A, B and C as though fully set forth herein.

12 74. As alleged in the claims for relief under the CWA and the RCRA herein, DEFENDANTS have  
13 discharged pollutants into soil, surface and ground water as well as into the air on and around  
14 INDIVIDUAL PLAINTIFFS' real property and/or residence, resulting in loss of value and habitability  
15 of their property.

16 75. The contamination as set forth in INDIVIDUAL PLAINTIFFS' claims for relief under the CWA  
17 and the RCRA above, and in extensive detail in the CWA NOTICE and RCRA NOTICE, resulted from  
18 the operation and maintenance of the MINE over which DEFENDANTS had and did exercise control  
19 and dominion. Therefore said operation and maintenance of the MINE were substantial factors in  
20 causing INDIVIDUAL PLAINTIFFS' damages as hereinafter set forth; and , constituted a taking under  
21 Article 1, Section 19 of the Constitution of the State of California.

22 76. As a legal cause of the operation and maintenance of the MINE, INDIVIDUAL PLAINTIFFS  
23 have sustained and will continue to sustain contamination resulting in real and personal property  
24 damages including but not limited to pollution of a pond on their property, pollution of their source of  
25 irrigation water for their garden and orchard and water supply for their animals, and pollution by toxic  
26 dust of the air on their property, resulting in decreased market value, stigma damage and loss of  
27 habitability of their residence, all in an amount according to proof.

1 77 As a legal cause of the operation and maintenance of the MINE, INDIVIDUAL PLAINTIFFS  
2 have sustained and will continue to sustain contamination which has prevented INDIVIDUAL  
3 PLAINTIFFS from the use and enjoyment of their property, all in an amount according to proof.

4 78. Continuing acts or failure to act by DEFENDANTS to address these violations will irreparably  
5 harm INDIVIDUAL PLAINTIFFS for which harm they have no plain speedy or adequate remedy at law.

6 **G. SEVENTH CLAIM FOR RELIEF**

7 **Negligence**

8 79. INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the allegations of Paragraphs  
9 1 through 78 including EXHIBITS A, B and C as though fully set forth herein.

10 80. DEFENDANTS, through their employees, agents and contractors, whose identities are presently  
11 unknown, failed to exercise due care with regard to their ownership, operation and maintenance of the  
12 MINE, as set forth above in INDIVIDUAL PLAINTIFFS' claims for relief under the CWA and the  
13 RCRA, incorporated within this claim, and have contributed to the discharge of pollutants into soil,  
14 surface and ground water as well as into the air in and around INDIVIDUAL PLAINTIFFS' real property  
15 and/or residence, resulting in loss of value and habitability of their property and presenting an imminent  
16 and substantial endangerment the health of INDIVIDUAL PLAINTIFFS and the environment  
17 surrounding INDIVIDUAL PLAINTIFFS' real property.

18 81. As a legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have sustained  
19 and will continue to sustain contamination and/or the imminent threat of such contamination, resulting  
20 in decreased market value, stigma damage and loss of habitability of their residence, all in an amount  
21 according to proof.

22 82. As a further legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have  
23 been prevented from the use and enjoyment of their property, all in an amount according to proof.

24 83. As a further legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have  
25 suffered and will continue to suffer economic losses, including but not limited to wage loss, loss of past  
26 and future income, in an amount according to proof.

27 84. As a further legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have  
28 suffered and will continue to suffer personal injuries, included but not limited to an extreme body rash

1 suffered by BIANCA AUGUSTINE and STUART BENNETT resulting in loss of consortium; earaches,  
2 head swelling and loss of hearing for five (5) months suffered by BIANCA AUGUSTINE, warts suffered  
3 by JAROD MYRON BLOOM and HEATH JAY BENNETT; toothache and abscess suffered by  
4 BIANCA AUGUSTINE; and headaches, stomachaches, nausea, burning eyes, loss of appetite, fatigue,  
5 memory loss suffered by each and all of the INDIVIDUAL PLAINTIFFS. As such INDIVIDUAL  
6 PLAINTIFFS have incurred and will continue to incur medical and related expenses, including medical  
7 monitoring expenses, all in an amount according to proof.

8 85. As a further legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have  
9 suffered and will continue to suffer emotional distress, anxiety, fear of illness, depression and other  
10 psychological, emotional and mental injuries resulting from the contamination or threat of contamination  
11 as alleged above.

12 86. Continuing acts or failure to act by DEFENDANTS to address these violations will irreparably  
13 harm INDIVIDUAL PLAINTIFFS for which harm they have no plain speedy or adequate remedy at law.

#### 14 **H. EIGHTH CLAIM FOR RELIEF**

##### 15 **Nuisance**

16 87. INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the allegations of Paragraphs  
17 1 through 86 including EXHIBITS A, B and C as though fully set forth herein.

18 88. DEFENDANTS, through their employees, agents and contractors, whose identities are  
19 presently unknown, by their ownership, operation and maintenance of the MINE, as set forth above in  
20 INDIVIDUAL PLAINTIFFS' claims for relief under the CWA and the RCRA, incorporated within this  
21 claim, have contributed to the discharge of pollutants into soil, surface and ground water as well as into  
22 the air on and around INDIVIDUAL PLAINTIFFS' real property and/or residence, constituting a  
23 nuisance under California Civil Code § 3479 thereby depriving INDIVIDUAL PLAINTIFFS of the quiet  
24 enjoyment of their property.

25 89. Continuing acts or failure to act by DEFENDANTS to address these violations will irreparably  
26 harm INDIVIDUAL PLAINTIFFS for which harm they have no plain speedy or adequate remedy at law.  
27  
28

**I. NINTH CLAIM FOR RELIEF**

**Negligence Per Se**

90. INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the allegations of Paragraphs 1 through 89 including EXHIBITS A, B and C as though fully set forth herein.

91. As set forth above in INDIVIDUAL PLAINTIFFS' claims for relief under the CWA and the RCRA, incorporated within this claim, DEFENDANTS have violated and continue to violate provisions of the CWA and the RCRA. These violations are the legal cause of INDIVIDUAL PLAINTIFFS' injuries and damages as hereinafter set forth. Further, the acts or omissions of DEFENDANTS which have violated the provisions of the CWA and the RCRA and the injuries and damages legally resulting therefrom, are of the nature that the CWA and the RCRA were designed to prevent. Further, INDIVIDUAL PLAINTIFFS are among the class of persons for whose protection the provisions of the CWA and the RCRA at issue were adopted. As such, DEFENDANTS' violations of these provisions constitute negligence per se under California Evidence Code § 669 and California common law.

92. As a legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have sustained and will continue to sustain contamination and/or the imminent threat of such contamination, resulting in decreased market value, stigma damage and loss of habitability of their residence, all in an amount according to proof.

93. As a further legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have been prevented from the use and enjoyment of their property, all in an amount according to proof.

94. As a further legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have suffered and will continue to suffer economic losses, including but not limited to wage loss, loss of past and future income, in an amount according to proof.

95. As a further legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have suffered and will continue to suffer personal injuries, included but not limited to an extreme body rash suffered by BIANCA AUGUSTINE and STUART BENNETT resulting in loss of consortium; earaches, head swelling and loss of hearing for five (5) months suffered by BIANCA AUGUSTINE, warts suffered by JAROD MYRON BLOOM and HEATH JAY BENNETT; toothache and abscess suffered by BIANCA AUGUSTINE; and headaches, stomachaches, nausea, burning eyes, loss of appetite, fatigue,

1 memory loss suffered by each and all of the INDIVIDUAL PLAINTIFFS. As such INDIVIDUAL  
2 PLAINTIFFS have incurred and will continue to incur medical and related expenses, including medical  
3 monitoring expenses, all in an amount according to proof.

4 96. As a further legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have  
5 suffered and will continue to suffer emotional distress, anxiety, fear of illness, depression and other  
6 psychological, emotional and mental injuries resulting from the contamination or threat of contamination  
7 as alleged above.

8 97. Continuing acts or failure to act by DEFENDANTS to address these violations will irreparably  
9 harm INDIVIDUAL PLAINTIFFS for which harm they have no plain speedy or adequate remedy at law.

10 **J. TENTH CLAIM FOR RELIEF**

11 **Trespass**

12 98. INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the allegations of  
13 Paragraphs 1 through 97 including EXHIBITS A, B and C as though fully set forth herein.

14 99. INDIVIDUAL PLAINTIFFS allege that DEFENDANTS' conduct, including the discharge of  
15 pollutants from the MINE as set forth above in INDIVIDUAL PLAINTIFFS' claims for relief under the  
16 CWA and the RCRA, incorporated within this claim, and, from mine waste rock spread on the road  
17 adjacent to INDIVIDUAL PLAINTIFFS' real property, resulting in contamination of INDIVIDUAL  
18 PLAINTIFFS' real property; and, DEFENDANTS' failure to properly clean up and remediate the  
19 conditions causing said damage, constitute wrongful acts of continuing trespass on INDIVIDUAL  
20 PLAINTIFFS' real property which has interfered with INDIVIDUAL PLAINTIFFS' rights of private  
21 occupancy.

22 100. As a legal cause of the trespass alleged above, INDIVIDUAL PLAINTIFFS have sustained  
23 and will continue to sustain contamination and/or the imminent threat of such contamination, resulting  
24 in decreased market value, stigma damage and loss of habitability of their residence, all in an amount  
25 according to proof.

26 101. As a further legal cause of the trespass alleged above, INDIVIDUAL PLAINTIFFS have been  
27 prevented from the use and enjoyment of their property, all in an amount according to proof.  
28

1 102. As a further legal cause of the trespass alleged above, INDIVIDUAL PLAINTIFFS have  
2 suffered and will continue to suffer economic losses, including but not limited to wage loss, loss of past  
3 and future income, in an amount according to proof.

4 103. As a further legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have  
5 suffered and will continue to suffer personal injuries, included but not limited to an extreme body rash  
6 suffered by BIANCA AUGUSTINE and STUART BENNETT resulting in loss of consortium; earaches,  
7 head swelling and loss of hearing for five (5) months suffered by BIANCA AUGUSTINE, warts suffered  
8 by JAROD MYRON BLOOM and HEATH JAY BENNETT; toothache and abscess suffered by  
9 BIANCA AUGUSTINE; and headaches, stomachaches, nausea, burning eyes, loss of appetite, fatigue,  
10 memory loss suffered by each and all of the INDIVIDUAL PLAINTIFFS. As such INDIVIDUAL  
11 PLAINTIFFS have incurred and will continue to incur medical and related expenses, including medical  
12 monitoring expenses, all in an amount according to proof.

13 104. As a further legal cause of the trespass alleged above, INDIVIDUAL PLAINTIFFS have  
14 suffered and will continue to suffer emotional distress, anxiety, fear of illness, depression and other  
15 psychological, emotional and mental injuries resulting from the contamination or threat of contamination  
16 as alleged above.

17 105. Continuing acts or failure to act by DEFENDANTS to address these violations will irreparably  
18 harm INDIVIDUAL PLAINTIFFS for which harm they have no plain speedy or adequate remedy at law.

19 **K. ELEVENTH CLAIM FOR RELIEF**

20 **Strict Liability in Tort**

21 106. INDIVIDUAL PLAINTIFFS reallege and incorporate by reference the allegations of Paragraphs  
22 1 through 105 including EXHIBITS A, B and C as though fully set forth herein.

23 107. INDIVIDUAL PLAINTIFFS allege that DEFENDANTS' conduct, including the discharge  
24 of pollutants from the MINE as set forth above in INDIVIDUAL PLAINTIFFS' claims for relief under  
25 the CWA and the RCRA, incorporated within this claim, as well as from mine waste rock spread on the  
26 road adjacent to INDIVIDUAL PLAINTIFFS' real property, has caused an ultra hazardous activity to  
27 exist; and, that INDIVIDUAL PLAINTIFFS have been damaged as a result of DEFENDANTS' course  
28 of conduct while engaged in the aforesaid ultra hazardous activity.

1 108. As a legal cause of the ultra hazardous activity alleged above, INDIVIDUAL PLAINTIFFS  
2 have sustained and will continue to sustain contamination and/or the imminent threat of such  
3 contamination, resulting in decreased market value, stigma damage and loss of habitability of their  
4 residence, all in an amount according to proof.

5 109. As a further legal cause of the ultra hazardous activity alleged above, INDIVIDUAL  
6 PLAINTIFFS have been prevented from the use and enjoyment of their property, all in an amount  
7 according to proof.

8 110. As a further legal cause of the ultra hazardous activity alleged above, INDIVIDUAL  
9 PLAINTIFFS have suffered and will continue to suffer economic losses, including but not limited to  
10 wage loss, loss of past and future income, in an amount according to proof.

11 111. As a further legal cause of the negligence alleged above, INDIVIDUAL PLAINTIFFS have  
12 suffered and will continue to suffer personal injuries, included but not limited to an extreme body rash  
13 suffered by BIANCA AUGUSTINE and STUART BENNETT resulting in loss of consortium; earaches,  
14 head swelling and loss of hearing for five (5) months suffered by BIANCA AUGUSTINE, warts suffered  
15 by JAROD MYRON BLOOM and HEATH JAY BENNETT; toothache and abscess suffered by  
16 BIANCA AUGUSTINE; and headaches, stomachaches, nausea, burning eyes, loss of appetite, fatigue,  
17 memory loss suffered by each and all of the INDIVIDUAL PLAINTIFFS. As such INDIVIDUAL  
18 PLAINTIFFS have incurred and will continue to incur medical and related expenses, including medical  
19 monitoring expenses, all in an amount according to proof.

20 112. As a further legal cause of the ultra hazardous activity alleged above, INDIVIDUAL  
21 PLAINTIFFS have suffered and will continue to suffer emotional distress, anxiety, fear of illness,  
22 depression and other psychological, emotional and mental injuries resulting from the contamination or  
23 threat of contamination as alleged above.

24 113. Continuing acts or failure to act by DEFENDANTS to address these violations will irreparably  
25 harm INDIVIDUAL PLAINTIFFS for which harm they have no plain speedy or adequate remedy at law.

26 WHEREFORE, RIVER WATCH and INDIVIDUALS PLAINTIFFS pray for judgment against  
27 DEFENDANTS as set forth hereafter.  
28

**VIII. RELIEF REQUESTED**

114. Declare DEFENDANTS to have violated and to be in violation of the CWA;

115. Issue an injunction ordering DEFENDANTS to immediately operate the MINE in compliance with the CWA and applicable effluent and receiving water limitations in California's General Permit, as well as State and Federal standards;

116. Order DEFENDANTS to pay civil penalties of \$27,500.00 per violation per day for its violations of the CWA;

117. Declare DEFENDANTS to have violated and to be in violation of RCRA § 6972(a)(1)(A) for violation of a PERMIT, STANDARD or REGULATION regarding the storage and disposal of hazardous wastes, specifically RCRA Section 3004 (d), 42 U.S.C. §6924(d);

118. Enjoin DEFENDANTS from storing and disposing of hazardous wastes at and around the MINE in a manner which violates RCRA Section 3004 (d), 42 U.S.C. §6924(d);

119. Order DEFENDANTS to pay civil penalties of \$25,000.00 per violation per day for its violations of RCRA § 6972(a)(1)(A) ;

120. Declare DEFENDANTS to have violated and to be in violation of the RCRA for discharging toxic pollutants at or around the MINE which are known carcinogens and reproductive toxins in sufficient quantity to pose an imminent and substantial risk to health;

121. Enjoin DEFENDANTS from discharging toxic pollutants from the MINE which toxins pose an imminent and substantial risk to health and the environment;

122. Declare DEFENDANTS to have violated and to be in violation of California Health and Safety Code §25249.5 for violation of the prohibition against discharging or releasing chemicals known to the State of California to cause cancer or reproductive toxicity to enter into water or onto or into land where such chemicals pass or probably will pass into a source of drinking water;

123. Enjoin DEFENDANTS from discharging arsenic and lead, listed as carcinogens and/or reproductive toxins under Proposition 65 from the MINE to water or onto or into land where such chemicals pass or probably will pass into a source of drinking water;

124. Order DEFENDANTS to pay civil penalties of \$25,000.00 per violation per day for their violations of California Health and Safety Code §25249.5;



1 125. Order DEFENDANTS to pay reasonable attorneys' fees and costs of RIVER WATCH and  
2 INDIVIDUAL PLAINTIFFS (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and  
3 applicable California law;

4 126. With respect to Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Causes of Action,

5 A) For general damages according to proof;

6 B) For special damages including, but not limited to real and personal property damages,  
7 decreased market value, stigma damages, loss of habitability, loss of use and enjoyment  
8 of property, cost of repair, wage loss, loss of past and future income, business  
9 interruption losses, medical and related expenses, medical monitoring costs, clean-up  
10 costs, all in an amount according to proof;

11 C) For interest on said damages according to proof;


12 D) For attorneys fees and costs of suit incurred herein pursuant to California Code of Civil  
13 Procedure § 1036;

14 127. For such other and further relief as the court deems just and proper.


15 **IX. DEMAND FOR JURY TRIAL**

16 RIVER WATCH and INDIVIDUAL PLAINTIFFS demand a trial by jury on all issues so triable  
17 in this Complaint.

18  
19 DATED: April 9, 2008

  
JERRY BERNHAUT  
Attorney for Plaintiff  
NORTHERN CALIFORNIA RIVER WATCH

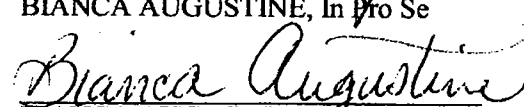
20  
21  
22 DATED: April 4, 2008

  
STUART BENNETT, In Pro Se

23  
24 DATED: April 4, 2008

  
BIANCA AUGUSTINE, In Pro Se

25  
26 DATED: April 4, 2008

  
BIANCA AUGUSTINE In Pro Se  
As Parent and Guardian Ad Litem for Minor Plaintiffs  
HEATH JAY BENNETT, MARIAH  
FRANCES BELLA BENNETT, and  
JAROD MYRON BLOOM

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Northern California River Watch, Heath Jay Bennett, Mariah Frances Bella Bennett, Jarod Myron Bloom, Bianca Augustine, et al

(b) County of Residence of First Listed Plaintiff Sonoma  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jerry Bernhaut, Esq. P.O. Box 5469, Santa Rosa, CA 95402-5469  
Tel. 707-528-8175

## DEFENDANTS

Bullion River Gold Corp., French Gulch (Nevada) Mining Corp., and Does 1 - 10, Inclusive

County of Residence of First Listed Defendant Shasta  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Unknown

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

33 U.S.C. Section 1251, et seq., 42 U.S.C. Section 6901, et seq.

Brief description of cause:

Violations of Clean Water Act and Resource Conservation and Recovery Act.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/03/2008

SIGNATURE OF ATTORNEY OF RECORD

*Jerry Bernhaut*

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

# EXHIBIT A

# Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402  
Phone 707-528-8175 Fax 707-528-8675  
lhm28843@sbcglobal.net



**CERTIFIED MAIL --  
RETURN RECEIPT REQUESTED**

August 3, 2007

Peter M. Kuhn, President  
Bullion River Gold Corp.  
3500 Lakeside Court, Suite 200  
Reno, NV 89509-4896

Peter M. Kuhn, President  
French Gulch (Nevada) Mining Corp.  
1325 Airmotive Way, Suite 325  
Reno, NV 89502-3289

***RE: Notice of Violations and Intent to File Suit Under the Clean Water Act***

Dear Managing Agent and/or Owner:

Clean Water Act § 505(b), 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action for violations under Clean Water Act § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of intent to sue to the alleged violator, the Environmental Protection Agency and the State in which the violations occur.

Stuart and Bianca Bennett and Northern California River Watch (collectively "Citizens") hereby place Bullion River Gold Corp. and French Gulch (Nevada) Mining Corp. (collectively "Polluters") on notice that following the expiration of sixty (60) days from the date of this NOTICE, Citizens intend to bring suit in the United States District Court against Polluters for their continuing violations of "an effluent standard or limitation", permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under Clean Water Act § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by Polluters' illegally discharging from the Washington Mine site and facilities described further in this NOTICE and identified on the attached Location Map, without a Clean Water Act § 402(a) NPDES permit issued under CWA § 402(b).

This NOTICE also addresses Polluters' failure to comply with the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges (WDID # 228S003380), its illegal discharges of contaminated stormwater from its facilities as further described in this NOTICE, its discharges of non-storm water pollutants from those facilities in violation of effluent limitations, and its violations of the procedural requirements of National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to Clean Water Act § 402(p), 33 U.S.C. § 1342(p), the General Permit.

The Clean Water Act ("CWA") regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a polluter who has been issued a permit pursuant to the NPDES, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. §1311(a) prohibition. Polluters do not have a NPDES permit for point source discharges [see CWA §§ 402(a) and 402(b)]. Without a NPDES permit all discharges from Polluters' site identified below to waters of the United States are illegal. Polluters only have a NPDES permit issued under CWA § 402(p) for stormwater. All non-stormwater discharges and stormwater discharges containing pollutants are violations of the CWA.

#### SITE DESCRIPTION

Washington Mine (the "Site") is located approximately 2.6 air miles northwest of French Gulch in western Shasta County, California. Access to the mine facilities is provided via unimproved dirt roads which extend from French Gulch Road. The total surface area affected by mine operations is about 5.5 acres.

Washington Mine has historically been used solely for the extraction and processing of gold-containing ore. The mine has been in operation intermittently since 1852. The existing mill building was constructed in 1939. The project Site consists of patented and un-patented claim blocks totaling 1,825 acres, 470 acres of which are patented. Surface rights to the un-patented claims are administered by the BLM Service Group. The claims are located within several sections, but primarily in Township 33 North, Range 7 West, Sections 16 and 17.

The Site facilities listed below have been used since January 1, 1976, or are planned for current active operation.

### Mill

The mill is located on a long, narrow bench at the 2,400-foot elevation. The mill processes ore from the mine. An office is located in the vicinity of the mill building for ore processing. Three 1,000-gallon diesel, aboveground storage tanks ("ASTs") and one 200-gallon gasoline AST are present at the mill location. All four tanks are located approximately 100 feet east of the Site adit. A tailings thickener and two air compressors are also located between the mill building and adit. The air compressors are located on a concrete foundation immediately adjacent to the AST east of the Site adit, while the thickener is located directly on the ground surface above the former percolation settling ponds.

A reverse osmosis water treatment system has been installed immediately west of the tailings thickener. The water treatment system is designed to remove all dissolved ions, including heavy metal ions. The system will be utilized to treat excess mine milling industrial waters, as well as to provide water for showers, sinks, and toilets. The system currently in place provides approximately 15 gallons per minute of water. The waste from this system is illegally discharged off Site.

Following treatment, waste water not required for mining and milling operations is surface applied at the areas being actively reclaimed to the west of the Site adit. The process water is over applied and runs off the Site entering surface waters. Storm water runoff is supposed to be confined to the long bench containing these facilities, as French Gulch Road is immediately above the mill building, and intercepts and diverts runoff from upslope of the mill bench.

Potential pollutants include petrochemicals, potassium xanthate, copper sulfate, arsenic, methylisobutylcarbanol, and sediment.

### Most Recent Adit

The most recent adit is located approximately 360 feet southwest of the existing mill location. The adit is located on the same long narrow bench containing the mill, at an elevation of 2,400 feet. This bench formerly contained a percolation pond and tailings settling pond, which have since been filled, but not remediated. None of the pollutants from the percolation ponds including arsenic were removed. Those pollutants continue to leak into the groundwater or are washed offsite during rain events.

### Boneyard

To the southwest of the mill is another long, narrow bench known as the Boneyard. The Boneyard contains no permanent structures. It has been used in the past for

stockpiling materials and supplies. The Boneyard is approximately 200 feet long by up to 40 feet wide, at an elevation of 2,400 feet. Drainage in the vicinity of the Boneyard appears to be by sheet flow and drainage channels. The Boneyard is highly contaminated with toxic metals including arsenic and has never been remediated. Pollutants leach into the groundwater and are also washed off site during rain events.

#### Robillard Adit and Escapeway

The Robillard Adit is at an elevation of 2,360 feet, located southeast of the mill. Its staging area consists of 2 long, narrow benches. The larger upper bench is at the level of the adit, and contains 18-gauge rail for ore carts, which are no longer in use. The rail extends on a trestle over the lower bench. A 2-foot high safety berm is present along the outer edge of the lower bench. Waste rock was once disposed of by pushing it over the edge of the lower bench, creating a barren and relatively unstable slope below the bench.

At times, waste water and acid drainage flows by gravity out of the adit and into the Scorpion Gulch drainage. The Robillard escapeway is located roughly 200 feet north-northwest of the Robillard Adit. The portal to the escapeway has caved in and is longer proposed for use. It is on a south-facing slope at an elevation of about 2,480 feet. An access road extends from the tailing disposal road to the escapeway and is about 250 feet in length. Drainage in the vicinity of the escapeway appears to be by sheet flow toward a ditch running along French Gulch Road. Storm water runoff throughout the area is a significant source of pollution to Scorpion Gulch.

#### 2630 Level Adit

The 2630 Level Adit is on an east-facing slope at an elevation of about 2,625 feet, located northeast of the mill. The staging area of the adit consists of a single bench with a short access spur extending east to the access road for the tailings disposal site. Currently, the staging area is being utilized to store drill cores generated during mine exploration. The adit was illegally constructed by a previous mine operator. A metal storage bin was formerly used to access the adit and is still present. The adit itself has since collapsed and is not proposed for future use. Drainage in the vicinity of the adit appears to be by sheet flow toward the tailings disposal road.

#### I-Level Adit

The I-Level Adit is on an east-facing slope at an elevation of about 2,160 feet, located in the northeastern portion. Ore is currently being mined from the adit and transported via haul trucks to the new adit staging area.

Similar to the Robillard Adit, waste water and acid drainage flows by gravity out of the I-Level Adit and makes its way to surface waters including adjacent waters of the United States. The pollutants flow into a small settling pond just outside the I-Level Adit and then indirectly into the Right Fork of the French Gulch.

#### Tailings Disposal

The tailings disposal site is on an east-facing slope at an elevation of 2,800 feet. Tailings deposited at the disposal site were periodically leveled and contoured or bermed creating the steep face of the stockpile. Erosion at the disposal site has formed a significant gully on the eastern side of the Site. Tailings have been observed down slope of the gully, washed down during storm events. The potential contaminants in the tailings, the continued erosion of the gully itself, as well as the overall stability at this location are significant concerns.

This location is currently being utilized for storage of waste rock generated from mining activities at the new site adit. Storm water runoff flows in an easterly direction toward the gully or toward a road washout and smaller gully located on the right side of the tailings disposal access road. Storm water runoff appears to flow into the Right Fork of French Gulch from both gullies.

#### Retention Pond

One unlined retention pond is present immediately east of the I-Level adit. The pond receives discharge from the adit and allows sediment to settle prior to flowing out of the pond. Wastewater flows from the pond into a pipe and over ground into the Right Fork of French Gulch.

#### SITE OPERATIONS

There are no storm water discharge systems on Site. Surface waters in the vicinity of the actively used mine locations consist of perennial streams that flow either to the north and east through the Right Fork of the French Gulch or to the south through Scorpion Gulch.

Groundwater currently flows by gravity out of the Robillard and I-Level Adits. Wastewater is discharged off site. Process water is applied via irrigation sprinklers to the area west of the mill formerly used for tailings storage, the bench area west of the new portal, and the boneyard area at the extreme west end. This improper disposal and discharge leaches pollutants into the groundwater and to surface waters including waters of the United States.



Sources of pollutants in storm water discharge at the Washington Mine Site include the milling process, vehicle and equipment fueling, usage and maintenance, materials storage, road maintenance and other activities. The majority of industrial processes at the Site take place at the existing mill location. The area between the mill and the new adit that cannot be used for alternative applications, such as road building material, rip-rap, etc., are intended to be used on-site to reclaim previously disturbed areas. This would include the area west of the mill, which was previously used for tailings storage, as well as the bench area past the proposed new adit and the boneyard area at the extreme west end of the Site. The intent is to spread and compact the mine waste rock, ultimately restoring the natural profile of the hillside. This fill system will be engineered to ensure long-term stability of the emplaced materials.

Ore is withdrawn from the surface stockpiles and fed to the crusher with a front-end loader. Crushed and screened ore is conveyed via belt to a 500-ton fine ore bin. Ore is withdrawn from the bin and fed to the grinding mill by an apron feeder conveyor combination. The ore is ground in the mill and separated by cyclone classifiers into coarse and fine fractions. The fine fraction is sent to a Falcon concentrator. The coarse fraction returns to the grinding mill for further size reduction. In the Falcon concentrator, the gold is separated from the other minerals by centrifugal force. The gold concentrate is collected and sent to the melt room.

The tailings from the Falcon concentrator are then further processed on shaking tables. The shaking tables use the differences in specific gravity of the gold and the other minerals to recover the very fine gold in the grind mixture. The recovered gold from the shaking tables is transferred to the melt room.

The tailings from the shaking tables are then pumped to the flotation conditioner tanks where they are mixed with a flotation collector in solution. The collector chemical, potassium xanthate, forms a bond with sulfide minerals which are in contact or surround some of the recoverable gold. The xanthate causes the sulfide minerals to become hydrophobic and amenable to forming a bond with air bubbles. The conditioned slurry is then transferred to a series of flotation cells in which air is injected into the cell to form bubbles. A frother, methylisobutylcarbanol, is injected to help form air bubbles during the flotation process, and copper sulfate is injected to enhance the attachment of the metal sulfides to the air bubbles in the flotation cells. As the bubbles float upward through the slurry, the sulfide minerals attach to the bubbles and are drawn off into a launderer at the top lip of the cell. The gangue minerals do not attach to the bubbles and are transferred along the bottom of the cell to the next cell in the bank. Ultimately, the slurry, which contains a concentration of toxic metals such as arsenic, lead, copper, and zinc, flows to the tailings thickener where it is partially de-watered prior to final disposition as backfill in the mine. Two thirds of the tailing volume is typically used in backfilling, one third is

deposited in chambers built for final disposal or for eventual recycling to stopes as backfill.

The concentrated minerals recovered from the flotation process then flow to a series of disc filters where they are de-watered. The filter cake from the disc filters is then collected in bags and shipped off-site to be further processed. Waters utilized in the industrial processes are often illegally discharged. The mill does not have a sulfide roaster or an autoclave to treat the sulfides and recover the gold on-site. Dore ingots will be cast in the melt facility from gravity concentrates.

#### OTHER NON-PERMITTED DISCHARGES

Other than previously described, other non-permitted water discharges at the Site include the wastewater and acid leachate flowing by gravity out of the Robillard, I-Level and Barnes adits and into the Right Fork of French Gulch or into Scorpion Gulch, discharges from trucks and other equipment for dust control and for the elimination of excess process waters, discharges from ponds and piping, and illegal releases of process water.

#### SOIL EROSION

All the soils mapped within the vicinity of the Site have a significant potential for erosion. The areas west of the mill and new adit that will be reclaimed with mine waste rock will serve as areas with a high potential for erosion.

The main erosion control and site stabilization concern at the Site revolves around the areas proposed to be actively reclaimed with mine waste rock. Polluters have used mine waste rock for erosion control and reclamation. However, the waste rock contains high amounts of toxic metals and sediment. The use of the mine waste rock causes stability problems. Erosion control concerns present a problem in all areas where soil has been placed and vegetation has not had ample time to become established. Polluters currently use a combination of silt fencing, straw wattles, and straw bales around soil stockpiles and downslope of highly erodable areas, such as areas being actively reclaimed. These measures are clearly inadequate as they allow large amounts of pollutants, toxic metals and sediment to be washed off site and into creeks, gulches and streams.

Runoff from the access roads throughout the Site is a serious cause of soil erosion pollution and sediment loss from the Site. The roads are improperly maintained. Waste rock containing toxic metals such as arsenic and copper are used to surface roads and then are leached out during rains and when Polluters discharges waste water as part of their "dust control".

### GOOD HOUSEKEEPING

Good housekeeping includes maintaining a clean and orderly work environment. A clean and orderly work area reduces the possibility of accidental spills caused by the mishandling of equipment or materials, and reduces safety hazards to personnel. It also reduces the chance of storm water coming into contact with spilled or improperly stored or placed significant materials. Currently Polluters have not implemented Good Housekeeping.

### NOTICE

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. **The specific standard, limitation, or order alleged to have been violated.**

To comply with this requirement Citizens have noticed Polluters of the fact that they have no NPDES permit allowing them to discharge pollutants to waters of the United States as required by CWA § 301(a), 33 U.S.C. § 1311(a) and CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b).

2. **The activity alleged to constitute a violation.**

To comply with this requirement Citizens have set forth narratives describing with particularity the activities leading to violations.

3. **The discharger responsible for the alleged violation.**

The discharger responsible for the alleged violations are the entities collectively referred to as "Polluters" throughout this NOTICE.

4. **The location of the alleged violation.**

The location or locations of the various violations are identified in the Site Description section of this NOTICE and in records either created or maintained by or for Polluters which relate to Polluters' activities on the Site.

5. **The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.**

This NOTICE covers the statutory period of limitations to date running from July 31, 2002 through July 31, 2007. Citizens will from time to time update and supplement this NOTICE to include all violations which occur after the date of this NOTICE. The majority of the violations such as discharging pollutants to waters of the United States without a NPDES permit, failure to obtain a NPDES permit, failure to implement the requirements of the CWA, failure to meet water quality objectives, etc., are continuous, and therefore each day is a violation. Citizens believe all violations set forth in the NOTICE are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the Regional Water Quality Control Board, County Health and local police and fire departments.

**6. The full name, address, and telephone number of the person giving notice.**

The persons giving this are Stuart and Bianca Bennett, 11413 French Gulch Road, French Gulch, CA. 96033 Tel. 530-359-2401, and Northern California River Watch, 6741 Sebastopol Avenue, Suite 140, Sebastopol, CA 95472. Tel. 707-824-4372.

Stuart and Bianca Bennett are individuals directly affected by Polluters' illegal acts as described in this NOTICE. The Bennetts live adjacent to the Site and down stream of its pollution. The Bennetts are members of Northern California River Watch.

Northern California River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California.

The violations of Polluters as set forth in this NOTICE affect the health and enjoyment of Citizens (or their members) who reside and recreate in the French Gulch watershed. Citizens (or their members) use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Polluters' violations of the CWA.

**VIOLATIONS**

Polluters have caused or permitted, cause or permit, or threaten to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance. Continuing discharges are in violation of the CWA, Porter-Cologne Water Quality

Control Act and provisions of the Water Quality Control Plan for the North Coast Region ("Basin Plan").

Beneficial uses of areal groundwater include domestic, irrigation, and industrial supply. Beneficial uses of Scorpion Gulch and French Gulch watersheds include the following:

- a. municipal and domestic supply
- b. agricultural supply
- c. industrial process supply
- d. groundwater recharge
- e. navigation
- f. hydropower generation
- g. water contact recreation
- h. non-contact water recreation
- i. commercial and sport fishing
- j. warm freshwater habitat
- k. cold freshwater habitat
- l. wildlife habitat
- m. migration of aquatic organisms
- n. spawning, reproduction, and/or early development.

Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. The most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria.

Discharge prohibitions contained in the Basin Plan apply to this Site. State Water Resources Control Board Resolution 68-16 (Statement of Policy With Respect To Maintaining High Quality of Waters in California) applies to this Site. State Water Resources Control Board Resolution 92-49 also applies to this Site and sets out the Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Section 13304 of the California Water Code.

CWA §301(a), 33 U.S.C. §1311(a), the Environmental Protection Agency and the State of California have formally concluded that violations by Polluters as described and set forth in this NOTICE by are prohibited by law. Beneficial uses of Scorpion Gulch, French Gulch and their tributaries in the vicinity of the Site are being affected in a prohibited manner by these violations. Pursuant to CWA § 304, 33 U.S.C. § 1311, the Environmental Protection Agency and the State have identified Polluters' Site as a point source, the discharges from which contribute to violations of applicable water quality standards.

From July 31, 2002 through July 31, 2007, Polluters have violated the CWA, the Basin Plan and the Code of Federal Regulation for discharging pollutants into waters of the United States without an NPDES permit as described above.

These enumerated violations are based upon review of the Regional Water Quality Control Board files for Polluters as well as studies conducted by Polluters in compliance with orders from regulatory agencies. In addition to all of the above violations, this NOTICE covers any and all violations evidenced by Polluters' records and monitoring data which Polluters have submitted (or failed to submit) to the Regional Board or other agencies. This NOTICE also covers any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by Polluters to the Regional Board or other regulatory agencies.

Pursuant to CWA § 309(d), 33 U.S.C. §1319(d), each of the above described violations of the CWA subjects the violator to a penalty of up to \$32,500.00 per day per violation for violations occurring within five (5) years prior to the initiation of a citizen enforcement action. In addition to civil penalties, Citizens will seek injunctive relief preventing further violations of the CWA pursuant to CWA §§ 505(a) and 505(d), 33 U.S.C. §§1365(a) and 1365(d), and such other relief as is permitted by law. Lastly, CWA § 505(d), 33 U.S.C. §1365(d), permits prevailing parties to recover costs and fees.

#### CONTACT INFORMATION

Citizens have retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver, Esquire  
Law Office of Jack Silver  
Post Office Box 5469  
Santa Rosa, CA 95402  
Tel. 707-528-8175  
Fax. 707-528-8675

#### CONCLUSION

Citizens believe this NOTICE sufficiently states grounds for filing suit for violations of the CWA. At the close of the 60-day notice period or shortly thereafter Citizens intends to file a citizen's suit under CWA § 505(a) against Polluters for violations at the Site described herein.

During the 60-day notice period, Citizens are willing to discuss effective remedies for the violations noted in this NOTICE. However, Polluters wish to pursue such

discussions in the absence of litigation, it is suggested that those discussions be initiated within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Sincerely,

Jack Silver

cc:

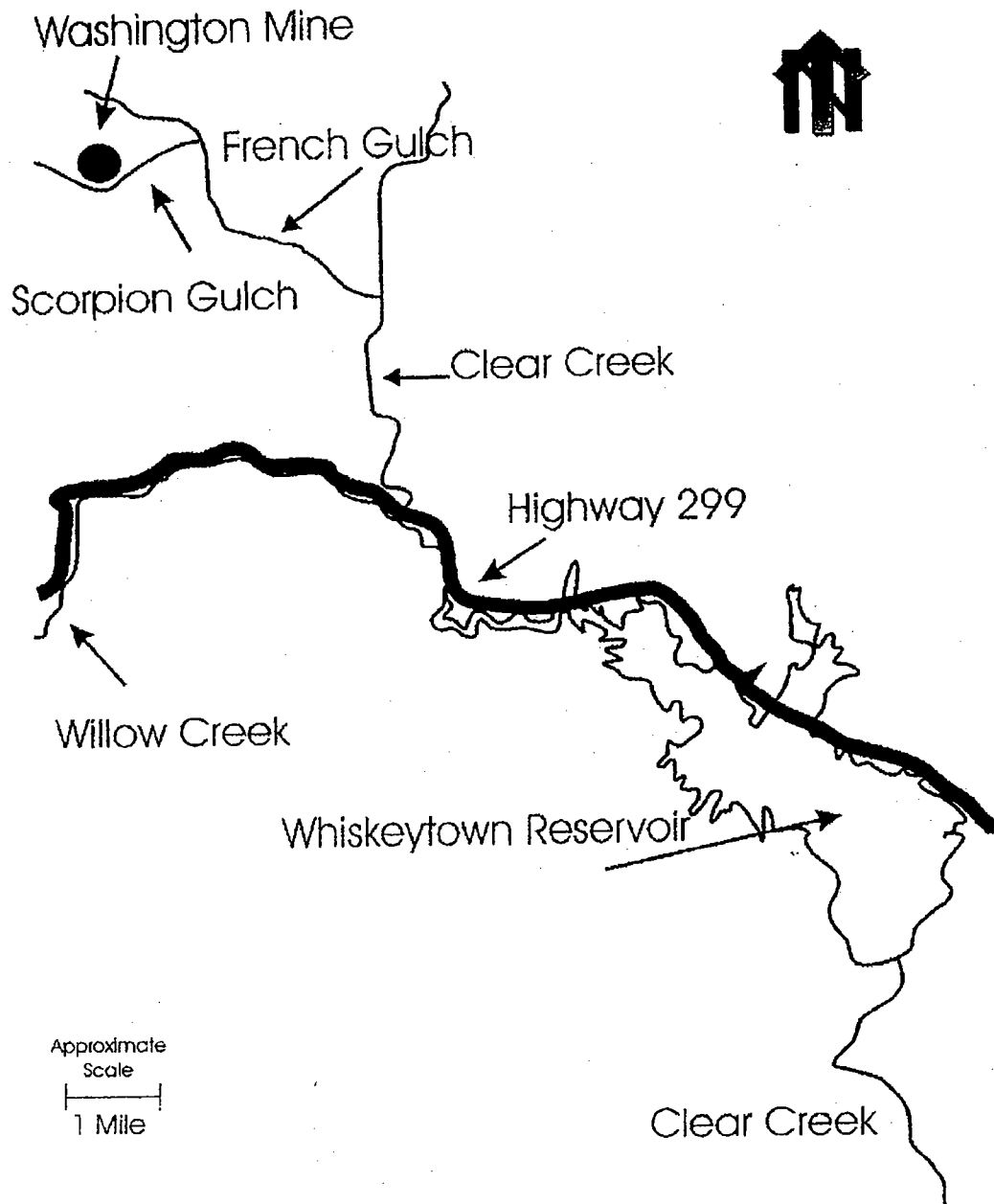
Stephen L. Johnson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Wayne Nastri, Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105-3901

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

C T Corporation System  
Registered Agent  
French Gulch (Nevada) Mining Corp.  
818 West Seventh St.  
Los Angeles, CA 90017

## Location Map





# **EXHIBIT B**

# Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402  
Phone 707-528-8175 Fax 707-528-8675  
lhm28843@sbcglobal.net



**REGISTERED MAIL  
RETURN RECEIPT REQUESTED**

August 3, 2007

Peter M. Kuhn, President  
Bullion River Gold Corp.  
3500 Lakeside Court, Suite 200  
Reno, NV 89509-4896

Peter M. Kuhn, President  
French Gulch (Nevada) Mining Corp.  
1325 Airmotive Way, Suite 325  
Reno, NV 89502-3289

***RE: Notice of Violations and Intent to File Suit Under the Resource Conservation and Recovery Act ("RCRA")***

Dear Managing Agent and/or Owner:

Stuart and Bianca Bennett and Northern California River Watch (collectively "Citizens") hereby place Bullion River Gold Corp. and French Gulch (Nevada) Mining Corp. (collectively "Polluters") on notice of Polluters' continuing and ongoing violations of the Federal Resource Conservation and Recovery Act ("RCRA," 42 U.S.C. § 6901 et seq. in conjunction with the continuing pollution at the Washington Mine site and facilities mining described further this NOTICE.

Citizens hereby notifies Polluters that at the expiration of the appropriate notice periods under RCRA, Citizens intends to commence a civil action against Polluters in the United States District Court on the following grounds:

1. Polluters' use and storage of hazardous materials at the site and facilities described further in this NOTICE has resulted in the leaching into soil and ground water of toxic metals, hazardous materials and other pollutants as described further herein which has and continues to violate permits, standards, regulations, conditions,

requirements or prohibitions effective pursuant to RCRA regarding storage of pollutants. [42 U.S.C. § 6972(a)(1)(A)];

2. Polluters' operations at the site and facilities described further in this NOTICE have caused contamination of soil and groundwater which presents an imminent and substantial endangerment to human health and the environment [42 U.S.C. § 6972(a)(1)(B)].

#### SITE DESCRIPTION

Washington Mine (the "Site") is located approximately 2.6 air miles northwest of French Gulch in western Shasta County, California. Access to the mine facilities is provided via unimproved dirt roads which extend from French Gulch Road. The total surface area affected by mine operations is about 5.5 acres.

Washington Mine has historically been used solely for the extraction and processing of gold-containing ore. The mine has been in operation intermittently since 1852. The existing mill building was constructed in 1939. The project Site consists of patented and un-patented claim blocks totaling 1,825 acres, 470 acres of which are patented. Surface rights to the un-patented claims are administered by the BLM Service Group. The claims are located within several sections, but primarily in Township 33 North, Range 7 West, Sections 16 and 17.

The Site facilities listed below have been used since January 1, 1976, or are planned for current active operation.

#### Mill

The mill is located on a long, narrow bench at the 2,400-foot elevation. The mill processes ore from the mine. An office is located in the vicinity of the mill building for ore processing. Three 1,000-gallon diesel, aboveground storage tanks ("ASTs") and one 200-gallon gasoline AST are present at the mill location. All four tanks are located approximately 100 feet east of the Site adit. A tailings thickener and two air compressors are also located between the mill building and adit. The air compressors are located on a concrete foundation immediately adjacent to the AST east of the Site adit, while the thickener is located directly on the ground surface above the former percolation settling ponds.

A reverse osmosis water treatment system has been installed immediately west of the tailings thickener. The water treatment system is designed to remove all dissolved ions, including heavy metal ions. The system will be utilized to treat excess mine milling industrial waters, as well as to provide water for showers, sinks, and toilets. The system

currently in place provides approximately 15 gallons per minute of water. The waste from this system is illegally discharged off Site.

Following treatment, waste water not required for mining and milling operations is surface applied at the areas being actively reclaimed to the west of the Site adit. The process water is over applied and runs off the Site entering surface waters. Storm water runoff is supposed to be confined to the long bench containing these facilities, as French Gulch Road is immediately above the mill building, and intercepts and diverts runoff from upslope of the mill bench.

Potential pollutants include petrochemicals, potassium xanthate, copper sulfate, arsenic, methylisobutylcarbanol, and sediment.

#### Most Recent Adit

The most recent adit is located approximately 360 feet southwest of the existing mill location. The adit is located on the same long narrow bench containing the mill, at an elevation of 2,400 feet. This bench formerly contained a percolation pond and tailings settling pond, which have since been filled, but not remediated. None of the pollutants from the percolation ponds including arsenic were removed. Those pollutants continue to leak into the groundwater or are washed offsite during rain events.

#### Boneyard

To the southwest of the mill is another long, narrow bench known as the Boneyard. The Boneyard contains no permanent structures. It has been used in the past for stockpiling materials and supplies. The Boneyard is approximately 200 feet long by up to 40 feet wide, at an elevation of 2,400 feet. Drainage in the vicinity of the Boneyard appears to be by sheet flow and drainage channels. The Boneyard is highly contaminated with toxic metals including arsenic and has never been remediated. Pollutants leach into the groundwater and are also washed off site during rain events.

#### Robillard Adit and Escapeway

The Robillard Adit is at an elevation of 2,360 feet, located southeast of the mill. Its staging area consists of 2 long, narrow benches. The larger upper bench is at the level of the adit, and contains 18-gauge rail for ore carts, which are no longer in use. The rail extends on a trestle over the lower bench. A 2-foot high safety berm is present along the outer edge of the lower bench. Waste rock was once disposed of by pushing it over the edge of the lower bench, creating a barren and relatively unstable slope below the bench.

At times, waste water and acid drainage flows by gravity out of the adit and into the Scorpion Gulch drainage. The Robillard escapeway is located roughly 200 feet north-

northwest of the Robillard Adit. The portal to the escapeway has caved in and is longer proposed for use. It is on a south-facing slope at an elevation of about 2,480 feet. An access road extends from the tailing disposal road to the escapeway and is about 250 feet in length. Drainage in the vicinity of the escapeway appears to be by sheet flow toward a ditch running along French Gulch Road. Storm water runoff throughout the area is a significant source of pollution to Scorpion Gulch.

#### 2630 Level Adit

The 2630 Level Adit is on an east-facing slope at an elevation of about 2,625 feet, located northeast of the mill. The staging area of the adit consists of a single bench with a short access spur extending east to the access road for the tailings disposal site. Currently, the staging area is being utilized to store drill cores generated during mine exploration. The adit was illegally constructed by a previous mine operator. A metal storage bin was formerly used to access the adit and is still present. The adit itself has since collapsed and is not proposed for future use. Drainage in the vicinity of the adit appears to be by sheet flow toward the tailings disposal road.

#### I-Level Adit

The I-Level Adit is on an east-facing slope at an elevation of about 2,160 feet, located in the northeastern portion. Ore is currently being mined from the adit and transported via haul trucks to the new adit staging area.

Similar to the Robillard Adit, waste water and acid drainage flows by gravity out of the I-Level Adit and makes its way to surface waters including adjacent waters of the United States. The pollutants flow into a small settling pond just outside the I-Level Adit and then indirectly into the Right Fork of the French Gulch.

#### Tailings Disposal

The tailings disposal site is on an east-facing slope at an elevation of 2,800 feet. Tailings deposited at the disposal site were periodically leveled and contoured or bermed creating the steep face of the stockpile. Erosion at the disposal site has formed a significant gully on the eastern side of the Site. Tailings have been observed down slope of the gully, washed down during storm events. The potential contaminants in the tailings, the continued erosion of the gully itself, as well as the overall stability at this location are significant concerns.

This location is currently being utilized for storage of waste rock generated from mining activities at the new site adit. Storm water runoff flows in an easterly direction toward the gully or toward a road washout and smaller gully located on the right side of

the tailings disposal access road. Storm water runoff appears to flow into the Right Fork of French Gulch from both gullies.

#### Retention Pond

One unlined retention pond is present immediately east of the I-Level adit. The pond receives discharge from the adit and allows sediment to settle prior to flowing out of the pond. Wastewater flows from the pond into a pipe and over ground into the Right Fork of French Gulch.

#### SITE OPERATIONS

There are no storm water discharge systems on Site. Surface waters in the vicinity of the actively used mine locations consist of perennial streams that flow either to the north and east through the Right Fork of the French Gulch or to the south through Scorpion Gulch.

Groundwater currently flows by gravity out of the Robillard and I-Level Adits. Wastewater is discharged off site. Process water is applied via irrigation sprinklers to the area west of the mill formerly used for tailings storage, the bench area west of the new portal, and the boneyard area at the extreme west end. This improper disposal and discharge leaches pollutants into the groundwater and to surface waters including waters of the United States.

Sources of pollutants in storm water discharge at the Washington Mine Site include the milling process, vehicle and equipment fueling, usage and maintenance, materials storage, road maintenance and other activities. The majority of industrial processes at the Site take place at the existing mill location. The area between the mill and the new adit that cannot be used for alternative applications, such as road building material, rip-rap, etc., are intended to be used on-site to reclaim previously disturbed areas. This would include the area west of the mill, which was previously used for tailings storage, as well as the bench area past the proposed new adit and the boneyard area at the extreme west end of the Site. The intent is to spread and compact the mine waste rock, ultimately restoring the natural profile of the hillside. This fill system will be engineered to ensure long-term stability of the emplaced materials.

Ore is withdrawn from the surface stockpiles and fed to the crusher with a front-end loader. Crushed and screened ore is conveyed via belt to a 500-ton fine ore bin. Ore is withdrawn from the bin and fed to the grinding mill by an apron feeder conveyor combination. The ore is ground in the mill and separated by cyclone classifiers into coarse and fine fractions. The fine fraction is sent to a Falcon concentrator. The coarse fraction returns to the grinding mill for further size reduction. In the Falcon concentrator, the gold

is separated from the other minerals by centrifugal force. The gold concentrate is collected and sent to the melt room.

The tailings from the Falcon concentrator are then further processed on shaking tables. The shaking tables use the differences in specific gravity of the gold and the other minerals to recover the very fine gold in the grind mixture. The recovered gold from the shaking tables is transferred to the melt room.

The tailings from the shaking tables are then pumped to the flotation conditioner tanks where they are mixed with a flotation collector in solution. The collector chemical, potassium xanthate, forms a bond with sulfide minerals which are in contact or surround some of the recoverable gold. The xanthate causes the sulfide minerals to become hydrophobic and amenable to forming a bond with air bubbles. The conditioned slurry is then transferred to a series of flotation cells in which air is injected into the cell to form bubbles. A frother, methylisobutylcarbanol, is injected to help form air bubbles during the flotation process, and copper sulfate is injected to enhance the attachment of the metal sulfides to the air bubbles in the flotation cells. As the bubbles float upward through the slurry, the sulfide minerals attach to the bubbles and are drawn off into a launderer at the top lip of the cell. The gangue minerals do not attach to the bubbles and are transferred along the bottom of the cell to the next cell in the bank. Ultimately, the slurry, which contains a concentration of toxic metals such as arsenic, lead, copper, and zinc, flows to the tailings thickener where it is partially de-watered prior to final disposition as backfill in the mine. Two thirds of the tailing volume is typically used in backfilling, one third is deposited in chambers built for final disposal or for eventual recycling to stopes as backfill.

The concentrated minerals recovered from the flotation process then flow to a series of disc filters where they are de-watered. The filter cake from the disc filters is then collected in bags and shipped off-site to be further processed. Waters utilized in the industrial processes are often illegally discharged. The mill does not have a sulfide roaster or an autoclave to treat the sulfides and recover the gold on-site. Dore ingots will be cast in the melt facility from gravity concentrates.

#### OTHER NON-PERMITTED DISCHARGES

Other than previously described, other non-permitted water discharges at the Site include the wastewater and acid leachate flowing by gravity out of the Robillard, I-Level and Barnes adits and into the Right Fork of French Gulch or into Scorpion Gulch, discharges from trucks and other equipment for dust control and for the elimination of excess process waters, discharges from ponds and piping, and illegal releases of process water.

### SOIL EROSION

All the soils mapped within the vicinity of the Site have a significant potential for erosion. The areas west of the mill and new adit that will be reclaimed with mine waste rock will serve as areas with a high potential for erosion.

The main erosion control and site stabilization concern at the Site revolves around the areas proposed to be actively reclaimed with mine waste rock. Polluters have used mine waste rock for erosion control and reclamation. However, the waste rock contains high amounts of toxic metals and sediment. The use of the mine waste rock causes stability problems. Erosion control concerns present a problem in all areas where soil has been placed and vegetation has not had ample time to become established. Polluters currently use a combination of silt fencing, straw wattles, and straw bales around soil stockpiles and downslope of highly erodable areas, such as areas being actively reclaimed. These measures are clearly inadequate as they allow large amounts of pollutants, toxic metals and sediment to be washed off site and into creeks, gulches and streams.

Runoff from the access roads throughout the Site is a serious cause of soil erosion pollution and sediment loss from the Site. The roads are improperly maintained. Waste rock containing toxic metals such as arsenic and copper are used to surface roads and then are leached out during rains and when Polluters discharges waste water as part of their "dust control".

### GOOD HOUSEKEEPING

Good housekeeping includes maintaining a clean and orderly work environment. A clean and orderly work area reduces the possibility of accidental spills caused by the mishandling of equipment or materials, and reduces safety hazards to personnel. It also reduces the chance of storm water coming into contact with spilled or improperly stored or placed significant materials. Currently Polluters have not implemented Good Housekeeping.

### NOTICE

RCRA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. The specific standard, limitation, or order alleged to have been violated.

To comply with this requirement Citizens have noticed Polluters of the fact that they have no permit issued pursuant to RCRA allowing to store, handle or treat hazardous materials at the Site.



**2. The activity alleged to constitute a violation.**

To comply with this requirement Citizens have set forth narratives describing with particularity the activities leading to violations.

**3. The discharger responsible for the alleged violation.**

The discharger responsible for the alleged violations are the entities collectively referred to as "Polluters" throughout this NOTICE.

**4. The location of the alleged violation.**

The location or locations of the various violations are identified in the SITE DESCRIPTION section of this NOTICE and in records either created or maintained by or for Polluters which relate to Polluters' activities.

**5. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.**

This notice covers the statutory period of limitations to date running from July 31, 2002 through July 31, 2007. Citizens will from time to time update and supplement this NOTICE to include all violations which occur after the date of this NOTICE. The majority of the violations such as discharging pollutants to ground water or waters of the United States, causing imminent and substantial danger, failure to obtain proper permits etc., are continuous, and therefore each day is a violation. Citizens believe all violations set forth in this NOTICE are continuing in nature or will likely continue after the filing of a lawsuit. Specific dates of violations are evidenced in Polluters' own records (or lack thereof) or files and records of other agencies including the Regional Water Quality Control Board, County Health and local police and fire departments.

**6. The full name, address, and telephone number of the person giving notice.**

The persons giving this are Stuart and Bianca Bennett, 11413 French Gulch Road, French Gulch, CA. 96033 Tel. 530-359-2401, and Northern California River Watch, 6741 Sebastopol Avenue, Suite 140, Sebastopol, CA 95472. Tel. 707-824-4372.

Stuart and Bianca Bennett are individuals directly affected by Polluters' illegal acts as described in this NOTICE. The Bennetts live adjacent to the Site and down stream of its pollution. The Bennetts are members of Northern California River Watch.

Northern California River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers,

creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California.

The violations of Polluters as set forth in this NOTICE affect the health and enjoyment of Citizens (or their members) who reside and recreate in the French Gulch watershed. Citizens (or their members) use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Polluters' violations of the RCRA.

### VIOLATIONS

Polluters have caused and permitted waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance. Continuing discharges are in violation of RCRA, the Porter-Cologne Water Quality Control Act and provisions of the Water Quality Control Plan for the North Coast Region (Basin Plan).

Beneficial uses of areal groundwater include domestic, irrigation, and industrial supply. Beneficial uses of Scorpion Gulch and French Gulch watersheds are as follows:

- a. municipal and domestic supply
- b. agricultural supply
- c. industrial process supply
- d. groundwater recharge
- e. navigation
- f. hydropower generation
- g. water contact recreation
- h. non-contact water recreation
- i. commercial and sport fishing
- j. warm freshwater habitat
- k. cold freshwater habitat
- l. wildlife habitat
- m. migration of aquatic organisms
- n. spawning, reproduction, and/or early development.

The California Water Code and regulations and policies developed thereunder, require cleanup and abatement of discharges and threatened discharges of waste to the extent feasible. Cleanup and abatement activities are to provide attainment of background levels of water quality, or the highest water quality that is reasonable if background levels of water quality cannot be restored. Alternative cleanup levels greater than background concentration shall be permitted only if the discharger demonstrates: a) that it is not feasible to attain background levels; b) the alternative cleanup levels are consistent with

the maximum benefit to the people of the State; c) alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and d) they will not result in water quality less than prescribed in the Basin Plan and Policies adopted by the State and Regional Water Quality Control Board.

Discharge prohibitions contained in the Basin Plan apply to this Site. State Water Resources Control Board Resolution 68-16 (Statement of Policy With Respect To Maintaining High Quality of Waters in California) applies to this Site. State Water Resources Control Board Resolution 92-49 also applies to this Site and sets out the Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Section 13304 of the California Water Code.

### REGULATORY STANDARDS

Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. The most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions must evaluate the feasibility of, at a minimum: (a) cleanup to background levels, (b) cleanup to levels attainable through application of best practicable technology, and (c) cleanup to protective water quality criteria levels.

The RWQCB has adopted a Water Quality Control Plan ("Basin Plan") which designates all surface and groundwater within the North Coast region as capable of supporting domestic water supply. The RWQCB has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents and other pollutants in surface and groundwater within the region. As discussed herein, Polluters have and are exceeding these levels and objectives.

### PERMITS, STANDARDS AND REGULATIONS

42 U.S.C. § 6972(a)(1)(A)

Toxic metals such as arsenic have been characterized as "hazardous waste" and as "solid waste" within the meaning of RCRA provisions. Accordingly, all regulatory mandates applicable to hazardous or solid waste apply to the use, storage and disposal of toxic metals.

Between approximately July 31, 2002 and July 31, 2007, Polluters have caused toxic metals and other hazardous waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and now creates, or threatens to create, conditions of pollution or nuisance. The discharges and threatened discharges of such waste are deleterious to the beneficial uses of water, and are creating and threaten to create various conditions of pollution and nuisance which will continue unless the

discharges and threatened discharges are permanently abated. Polluters have no permit for the storage, treatment or disposal of hazardous waste.

Between July 31, 2002 and July 31, 2007, Polluters' use and storage of toxic metals and other hazardous waste at the Site have allowed significant quantities of hazardous materials to be released or discharged into soil and groundwater in violation of provisions of the RCRA. Polluters have no permit issues pursuant to RCRA for handling, storing or treating hazardous waste.

**IMMINENT AND SUBSTANTIAL ENDANGERMENT**

42 U.S.C. § 6972(a)(1)(B)

Between July 31, 2002 and July 31, 2007, Polluters have allowed significant quantities of pollutants to be discharged to soil and groundwater beneath the Site and beneath adjacent properties. The contaminant levels in groundwater at the Site are significantly greater than the allowable MCL and/or WQO for the constituents. All of these pollutants are known to harm both plants and animals. In their concentration at this location these pollutants are creating an imminent and substantial endangerment to public health and the environment.

The violations alleged in this NOTICE are knowing and intentional in that Polluters in the past have used, stored and sold toxic metals at their mining facilities on the Site which are known to contain hazardous substances. Polluters have known of the contamination at the Site, and have also known that failing to promptly remediate the pollution allows the contamination to migrate through soil and groundwater at and adjacent to the Site, and to continually contaminate and re-contaminate actual and potential sources of drinking water in addition to surface waters.

Past or current violations of RCRA authorize the assessment of civil penalties. The enforcement provisions of 42 U.S.C. §§ 6928(a) and 6928(g) provide for the penalties where conditions of hazardous waste disposal have been alleged – as Citizens have alleged here with respect to Polluters' Site. Accordingly, under these provisions persons or entities violating RCRA are subject to substantial liability to the United States on a per day basis.

Violations of RCRA of the type alleged herein are a major cause of the continuing decline in water quality and pose a continuing threat to existing and future drinking water supplies of Northern California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

In addition to the violations set forth above, this NOTICE is intended to cover all violations of RCRA by Polluters evidenced by information which becomes available to Citizens after the date of this NOTICE.

The violations of Polluters as set forth in this NOTICE affect the health and enjoyment of Citizens (and their members) who reside and recreate in the affected watershed areas. Citizens (and their members) use the watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are conditions specifically impaired by Polluters' violations of RCRA as identified in this NOTICE; and in some cases, the economic interests of individual members of Northern California River Watch have been directly impaired by the violations of Polluters described herein.

#### CONTACT INFORMATION

Citizens have retained legal counsel to represent them in this matter. All communications should be addressed to:

Jack Silver, Esquire  
Law Office of Jack Silver  
Post Office Box 5469  
Santa Rosa, CA 95402  
Tel. (707) 528-8175  
Fax (707) 528-8675

#### CONCLUSION

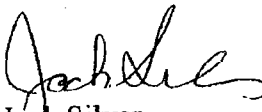
RCRA requires that a private party provide ninety (90) days prior notice to the alleged violator, the Administrator of the Environmental Protection Agency and the State in which the violation is alleged to have occurred before initiating an action for an imminent and substantial endangerment to human health or the environment. [42 U.S.C. § 6972(b)(2)(A)].

Citizens believes this NOTICE sufficiently states the grounds for filing suit against Polluters under the statutory and regulatory provisions of RCRA as to the Site referenced above. At the close of the notice periods or shortly thereafter, Citizens intend to file a suit against Polluters under RCRA provisions for each of the violations as alleged herein, and with respect to the existing conditions at the Site.

During the 90 day notice period, however, Citizens are willing to discuss effective remedies for the violations referenced in this NOTICE. If Polluters wish to pursue such discussions in the absence of litigation, they are encouraged to initiate such discussions

immediately so that we might be on track to resolving Citizens' issues with the Site before the end of the notice period. Citizens will not delay the filing of a lawsuit if discussions have not commenced by the time the 90-day notice period ends.

Sincerely,

  
Jack Silver

cc:

Stephen L. Johnson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Wayne Nastri, Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105-3901

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

Mark Leary, Executive Director  
Calif. Integrated Waste Management Board  
1001 "I" Street  
Sacramento, CA 95814

C T Corporation System  
Registered Agent  
French Gulch (Nevada) Mining Corp.  
818 West Seventh St.  
Los Angeles, CA 90017

# EXHIBIT C

# Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402  
Phone 707-528-8175 Fax 707-528-8675  
lhm28843@sbcglobal.net



**CERTIFIED MAIL --  
RETURN RECEIPT REQUESTED**

December 14, 2007

Peter M. Kuhn, President  
Bullion River Gold Corp. and  
French Gulch (Nevada) Mining Corp.  
3500 Lakeside Court, Suite 200  
Reno, NV 89509-4896

**RE: Notice of Violations and Intent to File Suit Under California's Safe Drinking  
Water and Toxic Enforcement Act (Proposition 65)**

Dear Mr Kuhn:

The California Safe Drinking Water and Toxic Enforcement Act, California Health Safety Code §25249.5 et seq., also known as Proposition 65, requires that sixty (60) days prior to the initiation of a civil action, a private party must give notice of the violation to the alleged violator, the California Attorney General, the district attorney (and any city attorney for cities with a population exceeding 750,000) in whose jurisdiction the violation is alleged to have occurred.

On behalf of Stuart and Bianca Bennett and Northern California River Watch (collectively, "Citizens"), I am providing statutory notification to Bullion River Gold Corp. and French Gulch (Nevada) Mining Corp. (collectively, "Polluters"), of their continuing and ongoing violations of the California Safe Drinking Water and Toxic Enforcement Act, California Health & Safety Code §25249.5 et seq., also known as Proposition 65.

Citizens hereby notify Polluters that after the expiration of sixty (60) days from the date of this NOTICE, Citizens intend to bring suit against Polluters under Proposition 65 for



knowingly discharging or releasing chemicals known to the State of California to cause cancer or reproductive toxicity to enter into water or onto or into land where such chemicals pass or probably will pass into a source of drinking water. Citizens contend that at each site facility identified below, Polluters have within the last 12 month period caused contamination from arsenic and lead to enter groundwater and/or surface waters of the State, in violation of Proposition 65.

#### SITE DESCRIPTION

Washington Mine (the "Site") is located approximately 2.6 air miles northwest of French Gulch in western Shasta County, California. Access to the mine facilities is provided via unimproved dirt roads which extend from French Gulch Road. The total surface area affected by mine operations is about 5.5 acres.

Washington Mine has historically been used solely for the extraction and processing of gold-containing ore. The mine has been in operation intermittently since 1852. The existing mill building was constructed in 1939. The project Site consists of patented and un-patented claim blocks totaling 1,825 acres, 470 acres of which are patented. Surface rights to the un-patented claims are administered by the BLM Service Group. The claims are located within several sections, but primarily in Township 33 North, Range 7 West, Sections 16 and 17.

The Site facilities listed below have been used since January 1, 1976, or are planned for current active operation.

##### 1. Mill

The mill is located on a long, narrow bench at the 2,400-foot elevation. The mill processes ore from the mine. An office is located in the vicinity of the mill building for ore processing. Three 1,000-gallon diesel, aboveground storage tanks ("ASTs") and one 200-gallon gasoline AST are present at the mill location. All four tanks are located approximately 100 feet east of the Site adit. A tailings thickener and two air compressors are also located between the mill building and adit. The air compressors are located on a concrete foundation immediately adjacent to the AST east of the Site adit, while the thickener is located directly on the ground surface above the former percolation settling ponds.

A reverse osmosis water treatment system has been installed immediately west of the tailings thickener. The water treatment system is designed to remove all dissolved ions, including heavy metal ions. The system will be utilized to treat excess mine milling industrial waters, as well as to provide water for showers, sinks, and toilets. The system

currently in place provides approximately 15 gallons per minute of water. The waste from this system is illegally discharged off Site. Potential pollutants include petrochemicals, potassium xanthate, copper sulfate, arsenic, methylisobutylcarbanol, and sediment.

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3. Boneyard

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4. Robillard Adit and Escapeway

The Robillard Adit is at an elevation of 2,360 feet, located southeast of the mill. Its staging area consists of 2 long, narrow benches. The larger upper bench is at the level of the adit, and contains 18-gauge rail for ore carts, which are no longer in use. The rail extends on a trestle over the lower bench. A 2-foot high safety berm is present along the outer edge of the lower bench. Waste rock was once disposed of by pushing it over the edge of the lower bench, creating a barren and relatively unstable slope below the bench.

At times, waste water and acid drainage flow by gravity out of the adit and into the Scorpion Gulch drainage. The Robillard escapeway is located roughly 200 feet north-northwest of the Robillard Adit. The portal to the escapeway has caved in and is no longer proposed for use. It is on a south-facing slope at an elevation of about 2,480 feet. An access road extends from the tailing disposal road to the escapeway and is about 250 feet in length. Drainage in the vicinity of the escapeway appears to be by sheet flow toward a ditch running along French Gulch Road.

5. 2630 Level Adit

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6. I-Level Adit

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7. Tailings Disposal

The tailings disposal site is on an east-facing slope at an elevation of 2,800 feet. Tailings deposited at the disposal site were periodically leveled and contoured or bermed creating the steep face of the stockpile. Erosion at the disposal site has formed a significant gully on the eastern side of the Site. Tailings have been observed down slope of the gully, washed down during storm events. The potential contaminants in the tailings, the continued erosion of the gully itself, as well as the overall stability at this location are significant concerns to Citizens.

This location is currently being utilized for storage of waste rock generated from mining activities at the new site adit. Storm water runoff flows in an easterly direction toward the gully or toward a road washout and smaller gully located on the right side of the tailings disposal access road. Storm water runoff appears to flow into the Right Fork of French Gulch from both gullies.

8. Retention Pond

One unlined retention pond is present immediately east of the I-Level adit. The pond receives discharge from the adit and allows sediment to settle prior to flowing out of the

pond. Wastewater flows from the pond into a pipe and over ground into the Right Fork of French Gulch.

### SITE OPERATIONS

There are no storm water discharge systems on Site. Surface waters in the vicinity of the actively used mine locations consist of perennial streams that flow either to the north and east through the Right Fork of the French Gulch or to the south through Scorpion Gulch.

Groundwater currently flows by gravity out of the Robillard and I-Level Adits. Wastewater is discharged off site. Process water is applied via irrigation sprinklers to the area west of the mill formerly used for tailings storage, the bench area west of the new portal, and the Boneyard area at the extreme west end. This improper disposal and discharge leaches pollutants into the groundwater and to surface waters including waters of the United States.

Sources of pollutants in storm water discharge at the Washington Mine Site include the milling process, vehicle and equipment fueling, usage and maintenance, materials storage, road maintenance and other activities. The majority of industrial processes at the Site take place at the existing mill location. The area between the mill and the new adit that cannot be used for alternative applications, such as road building material, rip-rap, etc., are intended to be used on-site to reclaim previously disturbed areas. This would include the area west of the mill, which was previously used for tailings storage, as well as the bench area past the proposed new adit and the Boneyard area at the extreme west end of the Site. The intent is to spread and compact the mine waste rock, ultimately restoring the natural profile of the hillside. This fill system will be engineered to ensure long-term stability of the emplaced materials.

Ore is withdrawn from the surface stockpiles and fed to the crusher with a front-end loader. Crushed and screened ore is conveyed via belt to a 500-ton fine ore bin. Ore is withdrawn from the bin and fed to the grinding mill by an apron feeder conveyor combination. The ore is ground in the mill and separated by cyclone classifiers into coarse and fine fractions. The fine fraction is sent to a Falcon concentrator. The coarse fraction returns to the grinding mill for further size reduction. In the Falcon concentrator, the gold is separated from the other minerals by centrifugal force. The gold concentrate is collected and sent to the melt room.

The tailings from the Falcon concentrator are then further processed on shaking tables. The shaking tables use the differences in specific gravity of the gold and the other minerals to recover the very fine gold in the grind mixture. The recovered gold from the shaking tables is transferred to the melt room.

The tailings from the shaking tables are then pumped to the flotation conditioner tanks where they are mixed with a flotation collector in solution. The collector chemical, potassium xanthate, forms a bond with sulfide minerals which are in contact or surround some of the recoverable gold. The xanthate causes the sulfide minerals to become hydrophobic and amenable to forming a bond with air bubbles. The conditioned slurry is then transferred to a series of flotation cells in which air is injected into the cell to form bubbles. A frother, methylisobutylcarbanol, is injected to help form air bubbles during the flotation process, and copper sulfate is injected to enhance the attachment of the metal sulfides to the air bubbles in the flotation cells. As the bubbles float upward through the slurry, the sulfide minerals attach to the bubbles and are drawn off into a launderer at the top lip of the cell. The gangue minerals do not attach to the bubbles and are transferred along the bottom of the cell to the next cell in the bank. Ultimately, the slurry, which contains a concentration of toxic metals such as arsenic, lead, copper, and zinc, flows to the tailings thickener where it is partially de-watered prior to final disposition as backfill in the mine. Two thirds of the tailing volume is typically used in backfilling, one third is deposited in chambers built for final disposal or for eventual recycling to stopes as backfill.

The concentrated minerals recovered from the flotation process then flow to a series of disc filters where they are de-watered. The filter cake from the disc filters is then collected in bags and shipped off-site to be further processed. Waters utilized in the industrial processes are often illegally discharged. The mill does not have a sulfide roaster or an autoclave to treat the sulfides and recover the gold on-site. Dore ingots will be cast in the melt facility from gravity concentrates.

#### OTHER NON-PERMITTED DISCHARGES

Other than previously described, other non-permitted water discharges at the Site include the wastewater and acid leachate flowing by gravity out of the Robillard, I-Level and Barnes adits and into the Right Fork of French Gulch or into Scorpion Gulch; discharges from trucks and other equipment for dust control and for the elimination of excess process waters; discharges from ponds and piping; and, illegal releases of process water.

#### SOIL EROSION

All the soils mapped within the vicinity of the Site have a significant potential for erosion. The areas west of the mill and new adit that will be reclaimed with mine waste rock will serve as areas with a high potential for erosion.

The main erosion control and site stabilization concern at the Site revolves around the areas proposed to be actively reclaimed with mine waste rock. Polluters have used mine waste rock for erosion control and reclamation. However, the waste rock contains high

amounts of toxic metals and sediment. The use of the mine waste rock causes stability problems. Erosion control concerns present a problem in all areas where soil has been placed and vegetation has not had ample time to become established. Polluters currently use a combination of silt fencing, straw wattles, and straw bales around soil stockpiles and downslope of highly erodible areas, such as areas being actively reclaimed. These measures are clearly inadequate as they allow large amounts of pollutants, toxic metals and sediment to be washed off site and into creeks, gulches and streams.

Runoff from the access roads throughout the Site is a serious cause of soil erosion pollution and sediment loss from the Site. The roads are improperly maintained. Waste rock containing toxic metals such as arsenic and copper are used to surface roads and then are leached out during rains and when Polluters discharge waste water as part of their "dust control".

### GOOD HOUSEKEEPING

Good housekeeping includes maintaining a clean and orderly work environment. A clean and orderly work area reduces the possibility of accidental spills caused by the mishandling of equipment or materials, and reduces safety hazards to personnel. It also reduces the chance of storm water coming into contact with spilled or improperly stored or placed significant materials. Currently, Polluters have not implemented Good Housekeeping.

### REGULATORY STANDARDS

Water Quality Objectives exist to ensure protection of the beneficial uses of water. Beneficial uses of areal groundwater include domestic, irrigation, and industrial supply. Beneficial uses of Scorpion Gulch and French Gulch watersheds include the following:

- a. municipal and domestic supply
- b. agricultural supply
- c. industrial process supply
- d. groundwater recharge
- e. navigation
- f. hydropower generation
- g. water contact recreation
- h. non-contact water recreation
- i. commercial and sport fishing
- j. warm freshwater habitat
- k. cold freshwater habitat

- l. wildlife habitat
- m. migration of aquatic organisms
- n. spawning, reproduction, and/or early development.

The most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels.

Discharge prohibitions contained in the Regional Water Quality Control Board's Basin Plan apply to this Site. State Water Resources Control Board Resolution 68-16 (Statement of Policy With Respect To Maintaining High Quality of Waters in California) applies to this Site. State Water Resources Control Board Resolution 92-49 also applies to this Site and sets out the Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Section 13304 of the California Water Code.

#### VIOLATIONS

Polluters have contaminated ground and drinking water sources in and around the Site with arsenic and lead. Arsenic [listed 02/27/87]) is a known carcinogen. Lead was listed on 02/27/87 as causing reproductive toxicity and listed on 01/01/91 as causing cancer. Surface and groundwater at the Site are potential sources of drinking water under the Basin Plan. In the course of doing business Polluters have discharged arsenic and lead to surface and groundwater at the Site on a daily basis since January 1, 1976. Under Proposition 65, a violator is subject to a maximum civil penalty of \$2,500.00 per day per violation.

Polluters have knowingly committed the discharges as alleged in this NOTICE. Polluters extract and process gold-containing ore in a manner which results in discharges of arsenic and lead as detailed above. Polluters have known of the contamination at the Site throughout the course of its operation, and are also aware that failing to remediate the pollution allows the contamination to migrate through soil and groundwater and continually contaminate and re-contaminate actual and potential sources of drinking water.

The violations of Polluters as set forth in this NOTICE affect the health and enjoyment of Citizens (or their members) who reside and recreate in the French Gulch watershed. Citizens (or their members) use this watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, hiking, photography, nature walks

and the like. Their health, use and enjoyment of this natural resource is specifically impaired by Polluters' violations of Proposition 65.

These enumerated violations are based upon review of the Regional Water Quality Control Board files for Polluters as well as studies conducted by Polluters in compliance with orders from regulatory agencies. In addition to all of the above violations, this NOTICE covers any and all violations evidenced by Polluters' records and monitoring data which Polluters have submitted (or failed to submit) to the Regional Board or other agencies. This NOTICE also covers any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by Polluters to the Regional Board or other regulatory agencies.

Violations of Proposition 65 of the type alleged herein are a major cause of the continuing decline in water quality and a continuing threat to existing and future drinking water supplies in Northern California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

In addition to the violations set forth above, this NOTICE is intended to cover all violations of Proposition 65 by Polluters evidenced by information which becomes available to Citizens after the date of this NOTICE.

#### IDENTIFICATION OF CITIZENS

Stuart and Bianca Bennett reside at 11413 French Gulch Road, French Gulch, CA 96033, Tel. 530-359-2401. They are individuals directly affected by Polluters' illegal acts as described in this NOTICE. Their home is adjacent to the Site and down stream of its pollution. The Bennetts are members of Northern California River Watch.

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is 6741 Sebastopol Avenue, Suite 140, Sebastopol, CA, 95472; its telephone number is (707) 824-4372.

#### CONTACT INFORMATION

Citizens have retained legal counsel to represent them in this matter. All communications should be addressed to:



Jack Silver, Esquire  
Law Office of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402-5469  
Tel. (707) 528-8175  
Fax (707) 528-8675

CONCLUSION

River Watch believes this NOTICE sufficiently states grounds for filing suit under Proposition 65. At the close of the 60-day notice period or shortly thereafter, River Watch intends to file suit against Bullion River Gold Corp. and French Gulch (Nevada) Mining Corp. under Proposition 65 for the violations as alleged herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted herein. If Bullion River Gold Corp. and/or French Gulch (Nevada) Mining Corp wishes to pursue such discussions in the absence of litigation, we suggest that you initiate the discussions within the next twenty (20) days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very truly yours,

  
Jack Silver

cc:

Attorney General Edmund G. Brown Jr.  
State of California  
Office of the Attorney General  
1515 Clay Street  
P.O. Box 70550  
Oakland, CA 94612-0550

Gerald C. Benito  
District Attorney - Shasta County  
1525 Court Street  
Redding, CA 96001

C T Corporation System  
Registered Agent  
French Gulch (Nevada) Mining Corp.  
818 West Seventh St.  
Los Angeles, CA 90017